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No. 06-1646

FILED
NOV 5 - 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

GINO GONZAGA RODRIQUEZ

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: JULY 11, 2007
CERTIORARI GRANTED: SEPT. 25, 2007

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 04-30397

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

GINO GONZAGA RODRIQUEZ, DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	PROCEEDINGS
9/29/04	DOCKETED CASE AND ENTERED APPEARANCES OF COUNSEL. Filed in D.C. on 9/22/04; setting schedule as follows: transcript shall be ordered by 10/13/04 for Gino Gonzaga Rodriquez; transcript shall be filed by 11/12/04; appellants' briefs, excerpts due by 12/22/04 for Gino Gonzaga Rodriquez; appellees' brief due 1/21/05 for USA; appellants' reply brief due by 2/4/05 for Gino Gonzaga Rodriquez. (RT required: yes) (Sentence imp 92 months) [04-30397] (af) [04-30397]
	* * * * *
12/7/04	Filed motion and deputy clerk order: (Deputy Clerk: tah) The governments motion to consolidate 04-30397 and 04-

DATE	PROCEEDINGS
	30494 is granted. The following cross-appeal briefing schedule shall govern: the deft's opening brf is due 1/11/05. The government's opening/answering brief is due 2/22/05; the deft's reply/answering brief is due 3/24/05. Crt records do not currently reflect that the dc has issued the COR for 04-30494. The govt shall monitor the issuance of the certificate. (Motion recvd 12/3) [04-30397, 04-30494] (ft) [04-30397 04-30494]
	* * * * *
5/6/05	Filed original and 15 copies of Deft Gino Gonzaga Rodriguez in 04-30397 first brief on cross-appeal, (Informal: no) of 37 pages and 5 excerpts of record in 1 vol; served on 5/5/05. [04-30397, 04-30494] (af) [04-30397 04-30494]
	* * * * *
6/24/05	Filed original and 15 copies of USA's second brief on cross-appeal (Informal: n) of 32 pages and 5 supplemental excerpts of record in 1 volume; served on 6/20/05 (minor Deficiency: Need White covers for Supplemental excerpts of record) Notified Counsel [04-30397, 04-30494] (ba) [04-30397 04-30494]

DATE	PROCEEDINGS
	* * * * *
8/3/05	Filed original and 15 copies Gino Gonzaga Rodriquez in 04-30397, Gino Gonzaga Rodriquez in 04-30494 third brief on cross-appeal (Informal: n) of 12 pages and 5 copies of record; (minor defcy: needs red covers); served on 8/2/05 [04-30397, 04-30494] (ft) [04-30494]
	* * * * *
8/15/05	Filed original and 15 copies USA in 04-30397, USA in 04-30494 reply brief, (Informal: n) of 6 pages; served on 8/11/05 [04-30397] (ft) [04-30397 04-30494]
	* * * * *
1/23/06	ARGUED AND SUBMITTED TO Johnnie B. RAWLINSON, Richard R. CLIFTON, Consuelo B. Marshall. [04-30397, 04-30494] (sb) [04-30397 04-30494]
	* * * * *
10/5/06	FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Johnnie B. RAWLINSON, author; Richard R. CLIFTON; Consuelo B. Marshall.) FILED AND ENTERED

DATE	PROCEEDINGS
	JUDGMENT. [04-30397, 04-30494] [04-30397 04-30494]
	* * * * *
11/20/06	Filed original and 40 copies Appellee USA in 04-30397, Appellant USA in 04-30494 petition for panel rehearing and petition for rehearing en banc 17 p.pages, served on 11/20/06 PANEL AND ALL ACTIVE JUDGES AND ANY INTEREST SENIOR JUDGES [04-30397, 04-30494] (ft) [04-30397 04-30494]
1/12/07	Filed order (Johnnie B. RAWLINSON, Richard R. CLIFTON, Consuelo B. Marshall): The petition for rehearing en banc filed on 11/20/06, is DENIED in 04-30397 and 04-30494. [04-30397, 04-30494] (rayc) [04-30397 04-30494]
1/22/07	MANDATE ISSUED [04-30397, 04-30494] (ft) [04-30397 04-30494]
	* * * * *

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

CRIMINAL DOCKET NO. 2:03-CR-00142

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

GINO GONZAGA RODRIQUEZ, DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
07/03/2003	1	COMPLAINT filed against defendant Gino Gonzaga Rodriquez by Magistrate Judge Cynthia Imbrogno [2:03-m-341] (LS) Modified on 07/11/2003 (Entered: 07/03/2003)
	* * * * *	
07/15/2003	10	INDICTMENT by USA Joseph H Harrington. Gino Gonzaga Rodriquez Count 1 (S/CI) dft continued detained (LE) (Entered: 07/16/2003)
	* * * * *	

DATE	DOCKET NUMBER	PROCEEDINGS
07/16/2003	13	ORDER ON PLEA by Magistrate Judge Cynthia Imbrogno: Not Guilty plea entered: dft continued detained (cc: USA, USM, Prob and Atty) (LE) (Entered: 07/16/2003)
07/16/2003	13	ORDER ON PLEA by Magistrate Judge Cynthia Imbrogno: Not Guilty plea entered: dft continued detained (cc: USA, USM, Prob and Atty) (LE) (Entered: XX)
	* * * * *	
01/26/2004	41	DAY ONE JURY TRIAL MINUTES: Hearing Location: Spokane CR: Debra Clark before Judge Robert H. Whaley jury trial held, jury impaneled, Court grants Defendant's Motions in Limine re: gang affiliation, etc. Court adjourned at 4:50 (RF) (Entered: 01/27/2004)
	* * * * *	
01/27/2004	44	DAY TWO JURY TRIAL MINUTES: Hearing Location: Spokane CR: Debra

DATE	DOCKET NUMBER	PROCEEDINGS
		Clark before Judge Robert H. Whaley Jury began deliberations at 11:45; Jury excused at 5:15 (RF) (Entered: 01/28/2004)
01/28/2004	45	DAY THREE JURY TRIAL MINUTES with WITNESS LIST & EXHIBIT LIST: Hearing Location: Spokane CR: Debra Clark before Judge Robert H. Whaley: Jury reached verdict: Guilty to Count 1 (RF) (Entered: 01/28/2004)
01/28/2004	46	COURT'S Jury Instructions (RF) (Entered: 01/28/2004)
01/28/2004	47	VERDICT find Gino Gonzaga Rodriquez guilty Gino Gonzaga Rodriquez count 1 (RF) (Entered: 01/28/2004)
		* * * * *
04/30/2004	56	OBJECTIONS by defendant to the Presentence Investigation Report (LE) (Entered: 04/30/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
05/07/2004	57	RESPONSE by plaintiff to objections to the presentence investigation report [56-1] (SAP) (Entered: 05/07/2004)
		* * * * *
05/26/2004	64	ORDER Directing Parties to Address Sentencing Issue by Judge Robert H. Whaley parties are directed to be prepared to discuss, at the sentencing hearing on 5/27/04, whether Wash. Rev. Code 69-5.408 is a "sentencing enhancement" and, if so, whether Congress intended the sentencing court to consider such an enhancement when determining whether a conviction qualifies as a "serious drug offense" (cc: all counsel) (CR) (Entered: 05/26/2004)
		* * * * *
06/24/2004	68	Defendant's Supplemental SENTENCING memorandum by Gino Gonzaga Rodriquez (RF) (Entered: 06/24/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
06/24/2004	69	SUPPLEMENTAL BRIEFING CONCERNING SENTENCING by USA (LE) (Entered: 06/25/2004)
06/30/2004	70	RESPONSE by USA to dft's Supplemental Memorandum [68-1] re Sentencing (LE) (Entered: 06/30/2004)
	* * * * *	
07/07/2004	72	SECOND SUPPLEMENTAL MEMORANDUM CONCERNING RCW 69.50.408 by USA (LE) (Entered: 07/072004)
08/06/2004		Courtroom Deputy Modification (Utility Event); sentencing hrg set 11:30 9/2/04 for Gino Gonzaga Rodriquez Spokane, WA (MF) (Entered: 08/06/2004)
08/26/2004	73	REPLY by defendant to USA's Response to Dft's Supplemental Memorandum (LE) (entered: 08/26/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
08/31/2004	74	United States' SUR RESPONSE to Defendant's Reply to Response to Defendant's Supplemental Memorandum [73-1] (RF) (Entered: 09/01/2004)
09/02/2004		Courtroom Deputy Modification (Utility Event); sentencing hrg set 10:00 9/3/04 for Gino Gonzaga Rodriquez Spokane, WA (MF) (Entered: 09/02/2004)
09/02/2004	75	MINUTES: DAY 1 SENTENCING HEARING - Hearing Location: Spokane, WA CR/ER: Debra Clark before Judge Robert H. Whaley sentencing hearing held 9/2/04 sentencing continued to 9/3/04 at 10:00 (LE) Modified on 09/03/2004 (Entered: 09/03/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
09/03/2004	76	MINUTES: DAY 2 SENTENCING HEARING - Hearing Location: Spokane, WA CR/ER: Debra Clark before Judge Robert H. Whaley (LE) (Entered: 09/03/2004)
09/03/2004	77	SENTENCING ORDER by Judge Robert H. Whaley (cc: all counsel, PROB) (LE) (Entered: 09/03/2004)
09/10/2004		LODGED NOTICE OF APPEAL by defendant (LE) (Entered: 09/13/2004)
09/15/2004	78	JUDGMENT sentencing Gino Gonzaga Rodriquez Count 1. IMPRISONMENT 92 months; SUPERVISED RELEASE 3 years; SPECIAL ASSESSMENT $100.00; FINE WAIVED, dft remanded to custody of USM case terminated (cc: USA, USM, PROB, ATTY) (LE) (Entered: 09/16/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
09/15/2004	79	NOTICE OF APPEAL TO 9CCA: Unknown; by defendant re judgment [78-3] (c:9CCA, USA, USM, PROB, ATTY, CR) 9CCA #04-30397 (LE) modified on 10/04/2004 (Entered: 09/17/2004)
	* * * * *	
09/28/2004	82	NOTICE OF APPEAL TO 9CCA. 9CCA# Unknown, by USA [78-3] (LE) Modified on 1/3/2005 to add 9CCA #04-30494 (LE, Case Administrator). (Entered: 09/28/2004)
	* * * * *	
02/25/2005	101	Judgment Returned Executed as to Gino Gonzaga Rodriquez on 1/13/05 re [78] Judgment (RF, Case Administrator) (Entered: 02/25/2005)

[Gov't Exh. 6]

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 95-1-01070-0

PA# 95-9-89741-0
RPT# 02-94-95700-0
RCW 69.50.401(a)D-F (#56002)

STATE OF WASHINGTON, PLAINTIFF

v.

GINO GONZAGA RODRIQUEZ, WM [REDACTED],
DEFENDANT(S)

[Filed: Nov. 21, 1995]

JUDGMENT AND SENTENCE
(FELONY)

I. HEARING

1.1 A sentencing hearing in this case was held: *11-16-95*

1.2 Present were:

Defendant: GINO GONZAGA RODRIGUEZ
Defendant's Lawyer: PAUL WASSON
Deputy Prosecuting Attorney:
DIANNE G. DOUGHERTY
Other:

1.3 The State has moved for dismissal of Count(s) _____.

1.4 Defendant was asked if there was any legal cause why judgment should not be pronounced, and none was shown.

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 11-16-95 by [plea] ~~[verdict] [jury] [non jury]~~ of:

Count No.: I Crime: DELIVERY OF A CONTROLLED SUBSTANCE NARCOTIC FROM SCHEDULE III-V
RCW 69.50.401(a)D-F (#56002)
Date of Crime December 29, 1994
Incident No. 02-94-95700-0

Count No.: _ Crime: _____
RCW _____
Date of Crime _____
Incident No. _____

Count No. : _ Crime: _____
RCW _____
Date of Crime _____
Incident No. _____

( ) With a special verdict/finding for use of deadly weapon on Count(s): (RCW 9.94A.125)

( ) With a special verdict/finding of sexual motivation on Count(s): _____. (RCW 9.94A.127)

( ) With a special verdict/finding of RCW 69.50.401(a) violation in a school bus or within 1000 feet of a school bus route stop or 1000 feet of the perimeter of a school grounds. (RCW 69.50.435)

( ) Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

( ) Additional current offenses attached in Appendix A.

2.2 CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Type
DCS	*current*	*A*	*11-10-94*	*drug*
DCS	"	*A*	*3-29-94*	*drug*
PCS	"	*A*	*1-10-95*	*drug*

( ) Additional criminal history is attached in Appendix B.

( ) Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)):

2.3 SENTENCING DATA:

	Offender Score	Seriousness Level	Range	Maximum Term
Count No. *I*	*7*	*4*	*43-57 mons*	*10 years*
Count No. __	_____	____	_____	_____
Count No. __	_____	____	_____	_____

( ) Additional current offenses sentencing information is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

( ) Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in Appendix D. (RCW 9.94A.390)

2.5 CATEGORY OF OFFENDER: The defendant is:

(a) (x) An offender who shall be sentenced to confinement of over one year.

(b) ( ) An offender who shall be sentenced to confinement of one year or less.

(c) ( ) A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.030(20), .120(5)).

(d) ( ) A sexual offender who is eligible for the special sentencing alternative and who shall be sentenced under the alternative

because both the defendant and the community will benefit from its use (RCW 9.94A.120(7)(a)).

(e) ( ) A felony sexual offender who shall be sentenced to confinement of over one year but less than six years and shall be ordered committed for evaluation of defendant's amenability to treatment (RCW. 9.94A.120(7)(b)).

(f) ( ) A persistent offender as defined in 9.94A.030(25) who shall be sentenced in accordance with 9.94A.120(4) to total confinement for life without the possibility of parole.

III. JUDGMENT

IT IS ADJUDGED that the defendant is guilty of the crime(s) of: DELIVERY OF A CONTROLLED SUBSTANCE - NARCOTIC FROM SCHEDULE III-V

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the conditions set froth below.

4.1 The Court, having examined the defendant's ability to pay monetary obligations, makes the following findings:

(x) The defendant [does] **[does not]** have the present ability to pay toward financial obligation herein.

(x) There [is] [is not] a likelihood of the defendant having a future ability to pay toward financial obligations herein.

(x) Defendant shall pay the following legal financial obligation to the Clerk of the Court:

(a) $110.00, Court costs; (RCW 36.18.020(18))

(b) $100.00 Victim Assessment; (RCW 7.68.035)

(c) ( ) $ _____, Restitution [per schedule to be filed];

( ) $ _____, Restitution for emergency response of a public agency; to-wit:

(38.52.)

( ) $_____, Restitution to ___for costs of extradition; (9.94A.030(10)(25)

( ) (d) $ _____, Recoupment for attorney's fees;

(x) (e) $100.00 state crime laboratory fee for each offense for a total of $*100.00*. The crime(s) for which the defendant has been adjudged guilty herein involve(s) a state crime laboratory analysis. (RCW 43.43.690)

( ) Upon a verified petition by the defendant relating to his/her ability to pay the fee, the court suspends $ ___ of said fee.

( ) (f) $125.00 state toxicology laboratory fee. (RCW 46.61.515)

( ) Upon a verified petition by the defendant relating to his/her ability to pay the fee, the court suspends $ _____ of said fee.

(x) (g) $ *1,000.00*, Fine; [ ] VUCSA additional fine waived due to indigency. (RCW 69.50.430)

( ) (h) $_____,Drug enforcement fund of ____. (RCW 69.50.520)

( ) (i) $_____, Other costs for:

( ) The defendant (does) (does not) have the means to pay for the costs of incarceration.

( ) The defendant shall pay the cost of incarceration at the rate of $50.00 per day. (RCW 9.94A.145(2))

$ *1,310.00* , TOTAL legal financial obligations.

Commencing with the first full month after the date of this Judgment and Sentence or after release from confinement, the defendant shall pay not less than $ *set by DOC* per month, subject to adjustment by the court as necessary upon the recommendation of the community corrections officer, to the Clerk of the Court until the total legal financial obligation is paid in full (with credit for amounts paid by co-defendants), to be paid in full by *11/11/2005* with a report by the Department of Corrections to be submitted to the court by *11-16-2001*. The Department of Corrections shall monitor all assets and earnings of the defendant while

s/he is confined and shall deduct appropriate amounts to be forwarded to the Clerk of the Court to satisfy the court-ordered legal financial obligations as provided for herein.

Upon receipt, the Clerk of the Court shall distribute the restitution to:

( ) Schedule of Restitution is attached as Appendix E.

( ) Schedule of Restitution to be filed.

( ) A notice of payroll deduction is to be immediately issued. (RCW 9.94A.145(3))

(x) A notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the defendant if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed. (RCW 9.94A/145)(3))

The court shall retain jurisdiction over the defendant for the greater of ten (10) years, subject to adjustment by the court, from the date of this Judgment and Sentence or from the defendant's last date of release from confinement pursuant to a felony conviction to assure payment of the above legal financial obligations. The defendant shall report to the Department of Corrections to monitor compliance; and obey conditions as provided by RCW 9.94A.120(12) and RCW 9.94A.145. Provided further, the Department of Corrections shall assist the court in setting or modifying the minimum monthly sum, when necessary, by investigating and reporting to the court on the monthly amount the offender should pay toward said legal financial obligation, considering the

defendant's financial circumstances, capabilities, and assets as determined under the provisions of RCW 9.94A.145.

( ) The defendant has been found guilty of an offense involving fraud or a deceptive practice and shall give notice of the conviction to the class of persons or sector of public affected or financially interested in the subject of the offense; to-wit: by mail, advertising or through the media as designated, to-wit:

4.3 CONFINEMENT OVER ONE YEAR: The defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing *1 Nov*, 19*95*:

48 months for Count No. *I*

_____ months for Count No. ___

_____ months for Count No. ___

( ) The terms in Counts No.____to be concurrent for a total term of ___months.

( ) The terms in Counts No. ___to be consecutive for a total term of _____ months.

(x) The sentence herein to run **(concurrently)** (consecutively) with the sentence in *95-1-01071-8, 95-1-01089-1*
(Count(s) or cause number(s))

(x) Credit be given for (time) (*168* days) served solely on these charges.

( ) Confinement in a work ethic camp is recommended if defendant is eligible. (RCW 9.94A.137).

( ) Upon completion of the Work Ethic Camp, defendant shall be released on community custody for any remaining time of total confinement.

(x) The defendant is sentenced to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of earned early release, according to the conditions set out in Appendix G.

( ) This being a [sex offense] [serious violent offense] committed on or after July 1, 1990, the defendant is sentenced to community placement for two (2) years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, beginning either upon completion of the term of confinement or at such time the defendant is transferred to community custody in lieu of earned early release, according to the conditions set out in Appendix G.

( ) The defendant, having been convicted of a felony sex offense, shall register with the County Sheriff where the defendant resides within twenty-four (24) hours of release from confinement and/or placement on community supervision as a convicted sex offender.

4.4 (x) Pursuant to RCW 70.24.340 the defendant shall submit to HIV testing as soon as possible, be provided pre-test counseling and be provided post-test counseling for the reason that:

( ) The offense herein is a sexual offense under RCW 9A.44.

( ) The offense herein is a prostitution offense or related to prostitution under RCW9A.88.

( ) The offense herein is a drug offense under RCW 69.50 and it is determined by the court that the related drug offense is one associated with the use of hypodermic needles.

Provided further the results of the HIV test are to be confidential but are to be provided to the victim, prosecuting attorney, community corrections officer and the public defender as necessary.

4.5 ( ) Pursuant to RCW 43.43.754, the defendant shall have a blood sample drawn for purposes of DNA identification analysis prior to his/her release from a department of corrections facility, this conviction being for:

( ) A felony defined as a sex offense under RCW 9.94A.030(29)(a)

( ) A violent offense as defined under RCW 9.94A.030(32).

The following appendices are attached to this Judgment and Sentence and are incorporated by reference:

(x) Appendix A, Understanding of Defendant's Criminal History

( ) Appendix B, Additional Criminal History

( ) Appendix C, Understanding of Defendant's Criminal History

( ) Appendix D, Findings of Fact and Conclusions of Law for Exceptional Sentence

( ) Appendix E, Schedule of Restitution

( ) Appendix F, Additional Conditions

(x) Appendix G, Conditions of Community Placement

( ) Appendix H, Order Prohibiting Contact

( ) Appendix I, Notification of Registration Requirement

(x) Appendix J, Advice of Time Limit for Filing Collateral Relief

Date: *11/16/95*

/s/ TARI S. EITZEN
Judge TARI S. EITZEN
Approved as to from:

Presented by:

/s/ DIANNE G. DOUGHERTY
DIANNE G. DOUGHERTY
Deputy Prosecuting Attorney
WA State Bar ID #: *16027*

/s/ PAUL WASSON
PAUL WASSON
Lawyer for Defendant
WA State Bar ID #: *5854*

BEST AVAILABLE COPY

FINGERPRINTS

25

Right Hand
Fingerprints of:

GINO GONZAGA RODRIQUEZ

ADDRESS:

Attested by:

THOMAS R. FALLQUIST, County Clerk

By: _____, deputy

Dated:

By:

CERTIFICATE

I, _____
Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: _____

_____
Clerk

By: _____
Deputy Clerk

OFFENDER IDENTIFICATION

S.I.D. NO. 014653368
Date of Birth 07 26 62
Sex MALE
Race WHITE
ORI WA032013A
OCA 150616
OIN 02-94-95700-0
DOA 12 30 94

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 95-1-01070-0

PA# 95-9-89741-0
RPT# 02-94-95700-0
RCW 69.50.401(a)D-F (#56002)

STATE OF WASHINGTON, PLAINTIFF

v.

GINO GONZAGA RODRIQUEZ,
WM [REDACTED], DEFENDANT(S)

[Filed: Nov. 21, 1995]

STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO A FELONY

I. STATEMENT OF DEFENDANT

1. My true name is *Gino G. Rodriquez*. I am also known as *n/a*.

2. My age is *33*. Date of birth [REDACTED].

3. I went through the _____ grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer,

one will be provided at no expense to me. My lawyer's name is PAUL WASSON.

(b) I am charged with the crime(s) of: DELIVERY OF A CONTROLLED SUBSTANCE - NARCOTIC FROM SCHEDULE III-V, and the elements of the crime(s) are: *In Spokane County to knowingly deliver, as principle [sic] or accomplice, a narcotic substance*.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself.

(c) The right at trial to hear and question witnesses who testify against me.

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.

(e) I am presumed innocent until the charge is proven beyond a reasonable doubt, or I enter a plea of guilty.

(f) The right to appeal certain pretrial court decisions and any determination of guilt after trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) The crime with which I am charged carries a maximum sentence of *10* years imprisonment and a $ *20,000* fine. The standard sentence range is from *43* months to *57* months confinement, based on the prosecuting attorney's understanding of my criminal history.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions in juvenile court for felonies or serious traffic offenses that were committed when I was 15 years of age or older. Juvenile convictions, except those for class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard range and the prosecuting attorney's recommendation increase.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay $ *100* as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the following recommendations to the judge: *Amend this information; dismiss several other counts; allow me to argue for low end of range and ask for furlough*.

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the court finds substantial and compelling reasons not to do so. If the court goes outside

the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

* * * * *

7. I plead *guilty* to the crime(s) of DELIVERY OF A CONTROLLED SUBSTANCE - NARCOTIC FROM SCHEDULE III-V, as charged in the [Amended] Information. I have received a copy of that Information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement. *I have several counts facing me in 3 separate information. I agree there are enough facts to convict me on some counts.*

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

/s/ GINO RODRIQUEZ
GINO RODRIQUEZ
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

/s/ DIANNE G. DOUGHERTY
DIANNE G. DOUGHERTY
DEPUTY PROSECUTING ATTORNEY
WA State Bar ID #: *16021*

/s/ PAUL WASSON
PAUL WASSON
DEFENDANT'S LAWYER
WA State Bar ID #: *5854*

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]

☒ the defendant had previously read

or

☐ the defendant's lawyer had previously read to him or her

or

*☐ an interpreter had previously read to the defendant

the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charge and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Date this *16* day of *Nov.*, 19*95*.

/s/ TARI S. EITZEN
JUDGE TARI S. EITZEN

* I am a certified interpreter or have been found otherwise qualified by the court to interpret in the ____ language which the defendant understands, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his/her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date this _____ day of _____, 19___.

_____
INTERPRETER

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 95-1-01070-0
DIANNE G. DOUGHERTY
Deputy Prosecuting Attorney

PA# 95-9-89741-0
RPT# 02-94-95700-0
RCW 69.50.401(a)D-F (#56002)

STATE OF WASHINGTON, PLAINTIFF

v.

GINO GONZAGA RODRIQUEZ WM [REDACTED],
DEFENDANT(S)

[Filed: Nov. 21, 1995]

AMENDED INFORMATION

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crimes(s):

DELIVERY OF A CONTROLLED SUBSTANCE, committed as follows: That the defendant, GINO GONZAGA RODRIQUEZ, in Spokane County, Washington, on or about December 29, 1994, did knowingly deliver a controlled substance, to-wit: narcotic from Schedule III-V,

/s/ DIANNE G. DOUGHTERY
DIANNE G. DOUGHTERY
Deputy Prosecuting Attorney

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 95-1-01070-0
DIANNE G. DOUGHERTY
Deputy Prosecuting Attorney

PA# 95-9-89741-0
RPT# 02-94-95700-0
RCW CT I: 69.50.401(a)D-F (#56002)
CT II: 69.50.401(d)-F (#56603)

STATE OF WASHINGTON, PLAINTIFF

v.

GINO GONZAGA RODRIQUEZ, WM [REDACTED],
DEFENDANT(S)

[Filed: May 19, 1995]

INFORMATION

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crime(s):

COUNT I: DELIVERY OF A CONTROLLED SUBSTANCE, committed as follows: That the defendant, GINO GONZAGA RODRIQUEZ, in Spokane County, Washington, on or about December 29, 1994, did knowingly deliver a controlled substance, to-wit: heroin,

COUNT II: And the Prosecuting Attorney, as aforesaid, further charges the defendant, GINO GONZAGA RODRIQUEZ, with the crime of POSSESSION OF A CONTROLLED SUBSTANCE, committed as follows:

That the defendant, GINO GONZAGA RODRIQUEZ, in Spokane County, Washington, on or about December 29, 1994, did unlawfully possess a controlled substance, to-wit: heroin,

/s/ DIANNE G. DOUGHTERY
DIANNE G. DOUGHTERY
Deputy Prosecuting Attorney
WA St. Bar ID # *16081*

STATEMENT OF INVESTIGATING OFFICER
AFFIDAVIT OF FACTS

REPORT #: 94-95700

STATE OF WASHINGTON COUNTY OF SPOKANE

v.

GINO G. RODRIGUEZ [*sic*], DEFENDANT,
M/M, [REDACTED]

[Filed: May 19, 1995]

The undersigned, a law enforcement officer, competent to testify, states as follows: that he/she believes a crime was committed by the above-named defendant/s in the City & County of Spokane, State of Washington, because:

On 12/29/94, the Spokane Police Department's Special Investigative Unit made a controlled purchase of Heroin using a Cooperative Individual at [REDACTED]. The CI was searched prior to and after the buy, with no unauthorized items or monies found. The CI was given prerecorded US currency and transported to the area of 1320 W. Sinto. Surveillance was maintained while the CI was at that location. The CI entered the residence, exited a short time later and immediately returned to the control officer.

On 12/30/94, SIU/SPD executed a search warrant at [REDACTED]. Entry was made into the residence at 1032 hours. Mr. RODIGUEZ [*sic*] was arrested for DELIVERY OF A CONTROLLED SUBSTANCE and searched incident to the search warrant and his arrest.

Found in his left front pants pocket was a large amount of cash, later found to be $1186 in US currency. $110 of this money proved to be our prerecorded "buy money". Corrections Officer Gooch searched RODRIGUEZ [*sic*] at Jail and found a small heat-sealed package of Heroin. Detective Burbridge did field-test this Heroin.

OFFICER JOLLEY - Can testify to searching the CI prior to & after the controlled purchase & found no unauthorized items or monies.

OFFICER BURBRIDGE - Can testify to transporting the CI to the area of [REDACTED], maintaining surveillance on the CI as the CI entered & exited the defendant's residence. Officer Burbridge can testify that the CI did give him a black tar substance & to giving this substance to Detective Quist. Officer Burbridge will testify to finding $1186 in US currency in Mr. RODRIGUEZ's [*sic*] left front pants pocket.

DETECTIVE QUIST - Can testify to recording times during the controlled purchase of Heroin from GINO RODRIGUEZ [*sic*] at [REDACTED]. Detective Quist will testify to taking possession of the black tar substance from Detective Burbridge. Detective Quist will testify to field-testing the substance and that it did field-test POSITIVE as Heroin. Detective Quist will testify that he did place this item on the property book under Property #114259, Item #1. Detective Quist will testify to transporting all items of evidence from [REDACTED] to the SIU office. After packaging those items, he did transport those items to the police property room under Property # 114259.

OFFICER GOOCH - Will testify to being a corrections officer at the Spokane County Jail. Officer Gooch will

testify that at the time of MR. RODRIGUEZ's [*sic*] booking, a small container containing a black tarry substance was found in Mr. RODRIGUEZ's [*sic*] right front shirt pocket.

DETECTIVE WILLIARD - Will testify to finding phone bills and other items of dominion and control and to generally assisting with the search warrant.

DETECTIVE GRUMBLY - Will testify to photographing the evidence. He will also testify to logging the evidence onto the property sheet. Detective Grumbly will testify to placing items to be sent to the WSP Crime Lab for testing into a drug envelope and sealing that drug envelope.

DETECTIVE McCABE - Will testify to assisting in execution of the search warrant and to assisting in packaging the property.

SGT. SCHERES - Will testify to assisting with the search warrant. He will testify that he sorted through the $1186 in U.S. currency found on Mr. RODRIGUEZ [*sic*] and finding $110 of our prerecorded "buy money" intermingled with this money.

WSP CHEMIST MELNIKOFF - Can testify to the chemical analysis of the evidence.

I testify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
(9A.72.085)

DATE: 4/5/95 PLACE: Spokane P.D.

Signature: /s/ ILLEGIBLE

[Gov't Exh. 7]

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 95-1-01071-8

PA# 95-9-89740-2
RPT# CT I: 02-94-85326-0
CT II: 02-95-01134-0
RCW CT I: 69.50.401(a)D-F (#56002)
CT II: 69.50.401(d)-F (#56603)

STATE OF WASHINGTON, PLAINTIFF

v.

GINO GONZAGA RODRIQUEZ, WM [REDACTED],
DEFENDANT(S)

[Filed: Nov. 21, 1995]

JUDGMENT AND SENTENCE
(FELONY)

I. HEARING

1.1 A sentencing hearing in this case was held: *11-16-95*

1.2 Present were:

Defendant: GINO GONZAGA RODRIQUEZ
Defendant's Lawyer: PAUL WASSON
Deputy Prosecuting Attorney:
DIANNE G. DOUGHERTY
Other:

1.3 The State has moved for dismissal of Count(s) _____.

1.4 Defendant was asked if there was any legal cause why judgment should not be pronounced, and none was shown.

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 11-16-95 by [plea] ~~[verdict] [jury] [non jury]~~ of:

Count No.: I Crime: DELIVERY OF A CONTROLLED SUBSTANCE NARCOTIC FROM SCHEDULE III-V AND

RCW CTI: 69.50.401(a)D-f (#56002)

Date of Crime NOVEMBER 10, 1994

Incident No. 02-94-85326-0

Count No.: II Crime: POSSESSION OF A CONTROLLED SUBSTANCE - HEROIN

RCW CT II: 69.50.401(d)-F (#56603)

Date of Crime JANUARY 10, 1995

Incident No. 02-95-01134-0

Count No. : _ Crime: _____
RCW _____
Date of Crime _____
Incident No. _____

( ) With a special verdict/finding for use of deadly weapon on Count (s): (RCW 9.94A.125)

( ) With a special verdict/finding of sexual motivation on Count (s): _____. (RCW 9.94A.127)

( ) With a special verdict/finding of RCW 69.50.401(a) violation in a school bus or within 1000 feet of a school bus route stop or 1000 feet of the perimeter of a school grounds. (RCW 69.50.435)

( ) Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

( ) Additional current offenses attached in Appendix A.

2.2 CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Type	
Burglary	*10-17-80*	*A*	*3-10-80*	*NV*	
Steal Gun	*11-23-82*	*A*	*8-21-82*	*NV*	[*All Wash.*]
Poss Unlawful Check	*1984*	*A*	*2-23-84*	*NV*	

( ) Additional criminal history is attached in Appendix B.

( ) Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)):

2.3 SENTENCING DATA:

	Offender Score	Seriousness Level	Range	Maximum Term
Count No. *I*	*7*	*IV*	*43-57 mons*	*10 years*
Count No. *II*	*2*	*II*	*3-9 mons*	*5 years*
Count No. __	____	____	_____	_____

( ) Additional current offenses sentencing information is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

( ) Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in Appendix D. (RCW 9.94A.390)

2.5 CATEGORY OF OFFENDER: The defendant is:

(a) (x) An offender who shall be sentenced to confinement of over one year.

(b) ( ) An offender who shall be sentenced to confinement of one year or less.

(c) ( ) A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.030(20), .120(5)).

(d) ( ) A sexual offender who is eligible for the special sentencing alternative and who shall be sentenced under the alternative because both the defendant and the community will benefit from its use (RCW 9.94.120(7)(a)).

(e) ( ) A felony sexual offender who shall be sentenced to confinement of over one year but less than six years and shall be ordered committed for evaluation of defendant's amenability to treatment (RCW 9.94A.120(7)(b)).

(f) ( ) A persistent offender as defined in 9.94A.030(25) who shall be sentenced in accordance with 9.94A.120(4) to total confinement for life without the possibility of parole.

III. JUDGMENT

IT IS ADJUDGED that the defendant is guilty of the crime(s) of: DELIVERY OF A CONTROLLED SUBSTANCE - NARCOTIC FROM SCHEDULE III-V and POSSESSION OF A CONTROLLED SUBSTANCE - HEROIN

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the conditions set froth below.

4.1 The Court, having examined the defendant's ability to pay monetary obligations, makes the following findings:

(✓) The defendant [does] **[does not]** have the present ability to pay toward financial obligation herein.

( ) There **[is]** [is not] a likelihood of the defendant having a future ability to pay toward financial obligations herein.

(✓) Defendant shall pay the following legal financial obligation to the Clerk of the Court:

(a) $110.00, Court costs; (RCW 36.18.020(18))

(b) $100.00 Victim Assessment; (RCW 7.68.035)

(c) ( ) $_____, Restitution [per schedule to be filed];

( ) $ _____ , Restitution for emergency response of a public agency; to-wit:

(38.52.);

( ) $ _____, Restitution to

for costs of

extradition; (9.94A.030(10)(25))

( ) (d) $ _____, Recoupment for attorney's fees;

(✓) (e) $100.00 state crime laboratory fee for each offense for a total of $*200.00*. The crime(s) for which the defendant has been adjudged guilty herein involve(s) a state crime laboratory analysis. (RCW 43.43.690)

( ) upon a verified petition by the defendant relating to his/her ability to pay the fee, the court suspends $ ___ of said fee.

( ) (f) $125.00 state toxicology laboratory fee. (RCW 46.61.515)

( ) upon a verified petition by the defendant relating to his/her ability to pay the fee, the court suspends $ _____ of said fee.

(x) (g) $*1,000.00*, Fine; [ ] VUCSA additional fine waived due to indigency. (RCW 69.50.430)

( ) (h) $_____Drug enforcement fund of ____. (RCW 69.50.520)

( ) (i) $_____, Other costs for:

( ) The defendant (does) (does not) have the means to pay for the costs of incarceration.

( ) The defendant shall pay the cost of incarceration at the rate of $50.00 per day. (RCW 9.94A.145(2))

$ *1,410.00* , TOTAL legal financial obligations.

Commencing with the first full month after the date of this Judgment and Sentence or after release from confinement, the defendant shall pay not less than $ *set by DOC* per month, subject to adjustment by the Court as necessary upon the recommendation of the community corrections officer, to the Clerk of the Court until the total legal financial obligation is paid in full (with credit for amounts paid by co-defendants), to be paid in full by

11/16/2005 with a report by the Department of Corrections to be submitted to the court by *11-16-2001*. The Department of Corrections shall monitor all assets and earnings of the defendant while s/he is confined and shall deduct appropriate amounts to be forwarded to the Clerk of the Court to satisfy the court-ordered legal financial obligation as provided for herein.

Upon receipt, the Clerk of the Court shall distribute the restitution to:

( ) Schedule of Restitution is attached as Appendix E.

( ) Schedule of Restitution to be filed.

( ) A notice of payroll deduction is to be immediately issued. (RCW 9.94A.145(3))

(✓) A notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the defendant if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed. (RCW 9.94A.145(3))

The court shall retain jurisdiction over the defendant for the greater of ten (10) years, subject to the adjustment by the court, from the date of this Judgment and Sentence or from the defendant's last date of release from confinement pursuant to a felony conviction to assure payment of the above legal financial obligations. The defendant shall report to the Department of Corrections to monitor compliance, and obey conditions as provided by RCW 9.94(A).120(12) and RCW 9.94A.145. Provided further, the Department of Corrections shall assist the court in setting or modifying the minimum monthly sum,

when necessary, by investigating and reporting to the court on the monthly amount the offender should pay toward said legal financial obligation, considering the defendant's financial circumstances, capabilities, and assets as determined under the provisions of RCW 9.94A.145.

( ) The defendant has been found guilty of an offense involving fraud or a deceptive practice and shall give notice of the conviction to the class of persons or sector of public affected or financially interested in the subject of the offense; to-wit: by mail, advertising or through the media as designated, to-wit:

4.3 CONFINEMENT OVER ONE YEAR: The defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing *2 Nov*, 19*95*:

48 months for Count No. *I*

3 months for Count No. *II*

_____ months for Count No. ___

( ) The terms in Counts No. _____ to be concurrent for a total term of _____ months.

( ) The terms in Counts No. _____ to be consecutive for a total term of _____ months.

(✓) The sentence herein to run **(concurrently)** (consecutively) with the sentence in *95-1-01070-0, 95-1-01089-1*

(Count(s) or cause number(s))

(✓) Credit be given for (time) (*165* days) served solely on these charges.

( ) Confinement in a work ethic camp is recommended if defendant is eligible. (RCW 9.94A.137).

( ) Upon completion of the Work Ethic Camp, defendant shall be released on community custody for any remaining time of total confinement.

(✓) The defendant is sentenced to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of earned early release, according to the conditions set out in Appendix G.

( ) This being a [sex offense] [serious violent offense] committed on or after July 1, 1990, the defendant is sentenced to community placement for two (2) years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, beginning either upon completion of the term of confinement or at such time the defendant is transferred to community custody in lieu of earned early release, according to the conditions set out in Appendix G.

( ) The defendant, having been convicted of a felony sex offense, shall register with the County Sheriff where the defendant resides within twenty-four (24) hours of release from confinement and/or placement on community supervision as a convicted sex offender.

4.4 (✓) Pursuant to RCW 70.24.340 the defendant shall submit to HIV testing as soon as possible, be provided pre-test counseling and be provided post-test counseling for the reason that:

( ) The offense herein is a sexual offense under RCW 9A.44.

( ) The offense herein is a prostitution offense or related to prostitution under RCW 9A.88.

( ) The offense herein is a drug offense under RCW 69.50 and it is determined by the court that the related drug offense is one associated with the use of hypodermic needles.

Provided further the results of the HIV test are to be confidential but are to be provided to the victim, prosecuting attorney, community corrections officer and the public defender as necessary.

4.5 ( ) Pursuant to RCW 43.43.754, the defendant shall have a blood sample drawn for purposes of DNA identification analysis prior to his/her release from a department of corrections facility, this conviction being for:

( ) A felony defined as a sex offense under RCW 9.94A.030(29)(a)

( ) A violent offense as defined under RCW 9.94A.030(32).

The following appendices are attached to this Judgment and Sentence and are incorporated by reference:

(✓) Appendix A, Understanding of Defendant's Criminal History

( ) Appendix B, Additional Criminal History

( ) Appendix C, Understanding of Defendant's Criminal History

( ) Appendix D, Findings of Fact and Conclusions of Law for Exceptional Sentence

( ) Appendix E, Schedule of Restitution

( ) Appendix F, Additional Conditions

(✓) Appendix G, Conditions of Community Placement

( ) Appendix H, Order Prohibiting Contact

( ) Appendix I, Notification of Registration Requirement

(✓) Appendix J, Advice of Time Limit for Filing Collateral Relief

Date: *11/16/95*

/s/ JUDGE TARI S. EITZEN
Judge TARI S. EITZEN

Presented by:

Approved as to form:

/s/ DIANNE G. DOUGHERTY
DIANNE G. DOUGHERTY
Deputy Prosecuting Attorney
WA State Bar ID #: *16021*

/s/ PAUL WASSON
PAUL WASSON
Lawyer for Defendant
WA State Bar ID #: *5854*

FINGERPRINTS

Right Hand
Fingerprints of:

GINO GONZAGA RODRIQUEZ

ADDRESS:

Dated:

Attested by:

THOMAS R. FALLQUIST, County Clerk

By: , deputy

By:

CERTIFICATE

I, _____
Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: _____

_____
Clerk

By: _____
Deputy Clerk

OFFENDER IDENTIFICATION

S.I.D. NO. 014653368
Date of Birth 07 26 62
Sex MALE
Race WHITE
ORI WA032013A
OCA 150616
OIN 02-94-85326;95-01134-0
DOA 11 10 94

addrquez SFD

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 95-1-01071-8
PA# 95-9-89740-2
RPT# CT I: 02-94-85326-0
CT II: 02-95-01134-0
RCW CT I: 69.50.401(a)D-F (#56002)
CT II: 69.50.401(d)-F (#56603)
STATE OF WASHINGTON, PLAINTIFF

v.

GINO GONZAGA RODRIQUEZ, WM [REDACTED],
DEFENDANT(S)

[Filed: Nov. 21, 1995]

STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO A FELONY

I. STATEMENT OF DEFENDANT

1. My true name is *Gino G. Roariquez*. I am also known as *n/a*.
2. My age is *33*. Date of birth [REDACTED].
3. I went through the *12th* grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is PAUL WASSON.

(b) I am charged with the crime(s) of: DELIVERY OF A CONTROLLED SUBSTANCE - NARCOTIC FROM SCHEDULE III-V, and POSSESSION OF A CONTROLLED SUBSTANCE - HEROIN, and the elements of the crime(s) are: *on separate dates in Spokane County, knowingly possess/deliver heroin/narcotics.*

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself.

(c) The right at trial to hear and question witnesses who testify against me.

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.

(e) I am presumed innocent until the charge is proven beyond a reasonable doubt, or I enter a plea of guilty.

(f) The right to appeal certain pretrial court decisions and any determination of guilt after trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) The crime with which I am charged carries a maximum sentence of imprisonment and a $ *20,000* fine. The standard sentence range is from *43* months to *57* months confinement, based on the prosecuting attorney's understanding of my criminal history.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions in juvenile court for felonies or serious traffic offenses that were committed when I was 15 years of age or older. Juvenile convictions, except those for class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and

complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard range and the prosecuting attorney's recommendation increase.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay $ 100 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the following recommendations to the judge: *Amend this information; dismiss several other counts; allow me to ask for low end of range and ask for furlough*.

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the court finds substantial and compelling reasons not to do so. If the court goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

* * * * *

7. I plead *guilty* to the crime(s) of DELIVERY OF A CONTROLLED SUBSTANCE - NARCOTIC FROM SCHEDULE III-V and POSSESSION OF A CONTROLLED SUBSTANCE - HEROIN, as charged in the [Amended] information. I have received a copy of that Information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement: *I face several counts in 3 separate informations. I agree there are facts sufficient to convict me on some counts.*

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this

"Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

/s/ GINO RODRIQUEZ
GINO RODRIQUEZ
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

/s/ DIANNE G. DOUGHERTY
DIANNE G. DOUGHTERY
DEPUTY PROSECUTING ATTORNEY
WA State Bar ID #: 1604

/s/ PAUL WASSON
PAUL WASSON
DEFENDANT'S LAWYER
WA State Bar ID # 5854

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [Check appropriate box]

☒ the defendant had previously read

or ☐ the defendant's lawyer had previously read to him or her

or *☐ an interpreter had previously read to the defendant

the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently, and voluntarily made. Defendant understands the charge and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this *16* day of *Nov.*, 19*95*

/s/ TARI S. EITZEN
Judge TARI S. EITZEN

* I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language which the defendant understands, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his/her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, 19 ____.

_____
INTERPRETER

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 95-1-01071-8
DIANNE G. DOUGHERTY
Deputy Prosecuting Attorney

PA# 95-9-89740-2
RPT# CT I: 02-94-85326-0
CT II: 02-95-01134-0
RCW CT I: 69.50.401(a)D-F (#56002)
CT II: 69.50.401(d)-F (#56603)

STATE OF WASHINGTON, PLAINTIFF

v.

GINO GONZAGA RODRIQUEZ, WM [REDACTED],
DEFENDANT(S)

[Filed: Nov. 21, 1995]

AMENDED INFORMATION

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crime(s):

COUNT I: DELIVERY OF A CONTROLLED SUBSTANCE, committed as follows: That the defendant, GINO GONZAGA RODRIQUEZ, in Spokane County, Washington, on or about November 10, 1994, did knowingly deliver a controlled substance, to-wit: a narcotic from Schedule III-V,

COUNT II: And the Prosecuting Attorney, as aforesaid, further charges the defendant, GINO GONZAGA RODRIQUEZ, with the crime of POSSESSION OF A CONTROLLED SUBSTANCE, committed as follows: That the defendant, GINO GONZAGA RODRIQUEZ, in Spokane County, Washington, on or about January 10, 1995, did unlawfully possess a controlled substance, to-wit: heroin,

/s/ DIANNE G. DOUGHERTY
DIANNE G. DOUGHERTY
Deputy Prosecuting Attorney

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 95-1-01071-8
DIANNE G. DOUGHERTY
Deputy Prosecuting Attorney

PA# 95-9-89740-2
RPT# 02-94-85326-0 COUNTS I-VI
02-95-01134-0 COUNTS VII-VIII
RCW CT I - IV: 69.50.401(a)
DCO-F (69.50.407) (#56610)
CT V: 69.50.401(a)P-F (#56202)
CT VI & VIII: 69.50.401(d) - F (#56603)
CT VII: 69.50.401(a)D-F (#56002)
RODRIQUEZ COUNTS I-VIII
TORGESON COUNT V ONLY
RYAN COUNT VI ONLY

STATE OF WASHINGTON, PLAINTIFF

v.

GINO GONZAGA RODRIQUEZ, WM [REDACTED],
DEANNA MARIE TORGESON, WF [REDACTED],
DEBORAH ANN RYAN, WF [REDACTED],
DEFENDANT(S)

[Filed: May 19, 1995]

INFORMATION

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crime(s):

COUNT I: CONSPIRACY TO DELIVERY A CONTROLLED SUBSTANCE, committed as follows: That the defendant, GINO GONZAGA RODRIQUEZ, in Spokane County, Washington, on or about October 12, 1994, did unlawfully conspire w/others to deliver a controlled substance, to-wit: cocaine,

COUNT II: And the Prosecuting Attorney, as aforesaid, further charges the defendant, GINO GONZAGA RODRIQUEZ, with the crime of CONSPIRACY TO DELIVER A CONTROLLED SUBSTANCE, committed as follows: That the defendant, GINO GONZAGA RODRIQUEZ, in Spokane County, Washington, on or about October 12, 1994, did unlawfully conspire with others to deliver a controlled substance, to-wit: heroin,

COUNT III: And the Prosecuting Attorney, as aforesaid, further charges the defendant, GINO GONZAGA RODRIQUEZ, with the crime of CONSPIRACY TO DELIVER A CONTROLLED SUBSTANCE, committed as follows: That the defendant, GINO GONZAGA RODRIQUEZ, in Spokane County, Washington, on or about November 1, 1994, did unlawfully conspire with others to deliver a controlled substance, to-wit: heroin,

COUNT IV: And the Prosecuting Attorney, as aforesaid, further charges the defendant, GINO GONZAGA RODRIQUEZ, with the crime of CONSPIRACY TO DELIVER A CONTROLLED SUBSTANCE, committed as follows: That the defendant, GINO GONZAGA RODRIQUEZ, in Spokane County, Washington, on or

about November 10, 1994, did unlawfully conspire with others to deliver a controlled substance, to wit: heroin,

COUNT V: And the Prosecuting Attorney, as aforesaid, further charges the defendants, GINO GONZAGA RODRIQUEZ and DEANNA MARIE TORGESON, with the crime of POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, committed as follows: That the defendants, GINO GONZAGA RODRIQUEZ and DEANNA MARIE TORGESON, in Spokane County, Washington, on or about November 10, 1994, did unlawfully possess, with intent to deliver, a controlled substance, to-wit: heroin,

COUNT VI: And the Prosecuting Attorney, as aforesaid, further charges the defendants, GINO GONZAGA RODRIQUEZ and DEBORAH ANN RYAN, with the crime of POSSESSION OF A CONTROLLED SUBSTANCE, committed as follows: That the defendants, GINO GONZAGA RODRIQUEZ and DEBORAH ANN RYAN, in Spokane County, Washington, on or about November 10, 1994, did unlawfully possess a controlled substance, to-wit: heroin,

COUNT VII: And the Prosecuting Attorney, as aforesaid, further charges the defendant, GINO GONZAGA RODRIQUEZ, with the crime of DELIVERY OF A CONTROLLED SUBSTANCE, committed as follows: That the defendant, GINO GONZAGA RODRIQUEZ, in Spokane County, Washington, on or about January 10, 1995, did knowingly deliver a controlled substance, to-wit: heroin,

COUNT VIII: And the Prosecuting Attorney, as aforesaid, further charges the defendant, GINO GONZAGA RODRIQUEZ, with the crime of POSSESSION OF A

CONTROLLED SUBSTANCE, committed as follows: That the defendant, GINO GONZAGA RODRIQUEZ, in Spokane County, Washington, on or about January 10, 1995, did unlawfully possess a controlled substance, to-wit: heroin,

/s/ DIANNE G. DOUGHERTY *1602*
Deputy Prosecuting Attorney WA St. Bar ID#

STATEMENT OF INVESTIGATING OFFICER
AFFIDAVIT OF FACTS

[95-1-01071-8]
REPORT #: 94-85326
#95-01134

STATE OF WASHINGTON COUNTY OF SPOKANE

v.

RODRIGUEZ [*sic*], GINO G., M/M, [REDACTED],
TORGESON, DEANNA M., W/F [REDACTED],
RYAN, DEBORAH A., W/F [REDACTED]

[Filed: May 19, 1995]

The undersigned, a law enforcement officer, competent to testify, states as follows: that he/she believes a crime was committed by the above-named defendant/defendants in the City & County of Spokane, State of Washington, because:

In October and November of 1994 and January of 1995, the Spokane Police Department's Special Investigative Unit conducted a number of controlled substance activities in which defendant #1, GINO RODRIGUEZ [*sic*], was involved. Two cooperative individuals were utilized during these activities and had made prior purchases for SIU in which arrests had been made. Both individuals were searched before and after their involvement with the defendant and were found free of any unauthorized

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items or monies. A total of two search warrants were executed at [REDACTED] as a result of these activities involving the cooperative individuals and the defendant. A number of illegal drug-related substances and items were found during these search warrants and subsequently were identified as belonging to the defendant. As a result of these SIU activities, the defendant is charged with four counts of CONSPIRACY TO DELIVER A CONTROLLED SUBSTANCE (HEROIN & COCAINE), one count of POSSESSION OF A CONTROLLED SUBSTANCE (HEROIN) WITH INTENT TO DELIVER, and two counts of POSSESSION OF A CONTROLLED SUBSTANCE (HEROIN).

On 10/12/94, CI 94-071 under auspices of SPD telephoned #324-9124. This number was known to SIU as one of which to contact the defendant. It is noted that several other CI's had provided this same phone number on different occasions to SPD personnel as the number utilized to contact GINO RODRIGUEZ [*sic*] and make arrangements for drug transactions. A result of the CI's phone call was an arrangement to purchase cocaine and heroin from a unidentified white male known as "J." This subject was observed leaving the area of [REDACTED] and making contact with the CI at [REDACTED]. After a brief contact, the CI rejoined the control officer and immediately presented substances which appeared to be cocaine and heroin. "J" was followed by SPD surveillance to the area of [REDACTED] and was apparently seen entering the front door of that residence after the transaction. The substances which were purchased did field-test POSITIVE for cocaine and heroin. The CI also stated that the subject who made contact with him/her identified himself as "J" the sub-

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ject with whom the CI had agreed to make the purchase. This will hereafter be referred to as BUY #1.

On 11/1/94, CI 94-071 working with SIU again telephoned 324-9124 and arranged to purchase heroin and cocaine. An audio intercept authorization had been received and therefore this conversation was recorded. According to the CI, he/she did ask for GINO and that the defendant did get on the telephone and agreed to the CI's request to purchase heroin and cocaine. The CI did meet with a subject who identified himself as "DAN" in the area of [REDACTED]. This subject was observed by SIU surveillance leaving [REDACTED] and making contact with the CI and then returning to that residence after the transaction was completed. The substance purchased by the CI was presented to the control officer and did field-test POSITIVE for the presence of heroin, a controlled substance. This activity will hereafter be referred to as BUY #2.

On 11/10/94, CI 94-71 again telephoned 324-9124 and arranged to purchase heroin. The individual who answered this telephone call identified herself as "SHANNON". The CI did ask to speak with GINO and was told by SHANNON that he was "busy". Arrangements were made for the amount and location of the transaction. Upon reaching [REDACTED], the CI telephoned 324-9124 and was assured by whoever answered the telephone that SHANNON was "on her way". This subject was driving the same vehicle which had made the delivery in BUY #2 to this CI. This subject and the vehicle were observed leaving [REDACTED] and arriving at N.W. Blvd. and Maple. After the transaction was completed, surveillance followed the vehicle and suspect and observed her enter [REDACTED]. The substance

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which was purchased from this suspect did field-test POSITIVE for the presence of heroin. This activity will hereafter be referred to as BUY #3.

It is noted that a traffic stop was initiated on the vehicle which had been involved in BUYS NOS. 2 and 3, with the subsequent identification of one DANIEL MENDOSA and SHANNON I. TIMM. Ms. Timm was not in the vehicle at the time that it was stopped, however, Mr. MENDOSA was subsequently arrested for Delivery of a Controlled Substance (Heroin) as he was identified as the subject who had made the delivery to the CI in BUY #2.

A search warrant was obtained on 11/10/94 to search the defendant, one DEANNA M. TORGESON, at [REDACTED]. The warrant was executed and both subjects were present at the time of the warrant execution. In a search of the home, a quantity of suspected heroin was found in the bedroom utilized by Ms. TORGESON and RODRIGUEZ [*sic*]. With the physical evidence discovered and statements made by defendants RODRIGUEZ [*sic*] and TORGESON, both were subsequently arrested for Possession of a Controlled Substance (Heroin) With Intent to Deliver. Defendant #3, identified as DEBORAH A. RYAN, was also present when the warrant was executed and did, in fact, open the door when officers knocked. This defendant was observed throwing an item behind a television which was placed on the floor in the hallway. This item was later retrieved and found to be heroin, a controlled substance. Defendant RYAN did waive her constitutional rights and admitted that the heroin which had been seized belonged to her and that she had thrown it behind the television when officers made entry. She was subsequently arrested and booked

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for Possession of a Controlled Substance (Heroin). Also as a result of this search warrant, a quantity of heroin was found on defendant RODRIGUEZ'S [*sic*] person when he was transported to Jail by Corrections Officer Cepeda. That item was presented to Officer Hensley who gave it to Detective Boardman for placement on the Property Book. This item also field-tested POSITIVE for heroin and defendant RODRIGUEZ [*sic*] was additionally charged with Possession of a Controlled substance. This search warrant activity will be hereby referred to as Search Warrant #1.

On 1/10/95, Cooperative individual 95-003, under the guidance of SPD/SIU, contacted GINO RODRIGUEZ [*sic*] at [REDACTED]. The CI was working with another suspect in illicit drug sales, one DONALD BURNS, in making this transaction. During this activity, the CI presented DONALD BURNS with prerecorded currency to purchase heroin from defendant RODRIGUEZ [*sic*] at [REDACTED]. DONALD BURNS was observed entering and exiting that residence and traveling to [REDACTED]. The CI did contact defendant RODRIGUEZ [*sic*] at [REDACTED] to learn of DONALD BURNS' activities with that defendant as well as his location. This CI spoke with RODRIGUEZ [*sic*] and learned that he had sold one gram of heroin to DONALD BURNS and "fronted" another gram to BURNS to sell on RODRIGUEZ'S [*sic*] behalf and that BURNS intended to travel to [REDACTED]. This CI was transported to that area and did, in fact, make contact with DONALD BURNS and confirmed that he had two grams of heroin on his person, reportedly received from GINO RODRIGUEZ [*sic*]. The CI did receive approximately one gram of heroin from BURNS as prear-

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ranged and this did field-test POSITIVE for the presence of heroin. A search warrant was obtained later on this date of 1/10/95 for [REDACTED] to include DEANNA TORGESON, who was known to reside there and GINO RODRIGUEZ [*sic*]. Ms. TORGESON was present when the warrant was executed, however, RODRIGUEZ [*sic*] was not at that location. Paraphernalia and other drug-related items were seized during the search of the residence. One of those items was sent to the WSP Laboratory for testing and a POSITIVE result was received for heroin residue in one of the submitted items. Based on statements made by Ms. TORGESON during the search warrant, and the controlled buy activity previously on this date, it was determined that defendant RODRIGUEZ [*sic*] definitely had control of those items which were seized during the search warrant execution. Subsequently, he would be charged with Possession of a Controlled Substance (Heroin) and Conspiracy to Deliver a Controlled Substance (Heroin) based on the controlled substance buy earlier on this date and the heroin residue which was located in the residence also seized later on this date. This search warrant is hereby referred to as Search Warrant #2.

BUYS NO. 1, 2 and 3 and Search Warrant #1 are under SPD 94-085326 & Property #112099.

BUY #1: (10/12/94)

COOPERATIVE INDIVIDUAL 94-071 - Will testify that he/she, as well as his/her personal vehicle, was searched before and after the transaction and both were found clear of unauthorized items and/or monies. The CI will further testify to telephoning [REDACTED] and talking to a subject who identified himself as "J" to ar-

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range for the purchase of cocaine and heroin. The CI will further state that "J" indicated that he would travel to the location of [REDACTED] to make the delivery and would be traveling on a mountain bike. The CI will state that he/she arrived at the location and again telephoned [REDACTED] to insure that "J" was enroute to that location. The CI will testify that a female answered the phone and indicated that "J" had left the residence. The CI will also indicate that a white male, who identified himself as "J" to the CI, did arrive at the location and exchanged cocaine & heroin for prerecorded U.S. currency. The CI will then testify that he/she presented these substances to the control officer upon returning to the Public Safety Building and that on no occasion did he/she meet any person other than "J" during this transaction. The CI will also testify that he/she signed an authorization form, allowing for the recording of his/her conversations with subjects who answered [REDACTED].

DETECTIVE BOARDMAN - Will testify to searching the CI's vehicle before and after this transaction and to finding no unauthorized items or monies in that vehicle. This detective will also state that she witnessed the CI dial [REDACTED] and overheard the CI's part of the conversation whereby arrangements were made to purchase heroin & cocaine at [REDACTED]. She will also testify that she did receive an audio intercept authorization form, allowing for this recording. Detective Boardman will testify to surveiling the CI as he/she traveled from the Public Safety Building to N.W. Blvd. & Maple, as well as to observing the meeting between the CI and the suspect. Detective Boardman will further state that she followed the CI from this location to the Public

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Safety Building where he/she immediately handed Boardman two different packages, one containing cocaine and the other heroin.

DETECTIVE GRUMBLY - Will testify to observing a white male on a bicycle leaving the area of [REDACTED]. He will also testify to observing that same subject on the bicycle return to the area after the transaction was completed.

DETECTIVE WILLARD - Will testify to also observing the suspect "J" leave and then return to the area of [REDACTED] when the transaction occurred. He will also indicate that he field-tested the substance purchased and received a POSITIVE conclusion for cocaine and heroin, both being controlled substances. He will further state that he packaged, initialed and placed those items, as well as the audio tape, on the Property Book.

DETECTIVE McCABE - Will testify that he searched the CI before and after the transaction and found no unauthorized items of monies on his/her person. He will also clarify that he witnessed an exchange occur between the CI and "J" in the parking lot at [REDACTED]. He will further indicate that he assisted in surveillance of "J" on the bicycle to the area of [REDACTED].

SGT. SCHERES - Will testify to observing the contact between the CI and "J" at [REDACTED]. He will also state that he assisted in surveillance of "J" following the transaction from the location where it occurred to the area of [REDACTED]. He will also testify that he did observe a suspect walking a bicycle up the stairway inside [REDACTED] and to that subject looking like the

person he had followed from the transaction location to [REDACTED].

DETECTIVES HILL & QUIST - These detectives will testify to assisting in the trailing surveillance of the suspect from [REDACTED] to the transaction location and back to [REDACTED].

OFFICER McGREGOR - Will testify to transporting those items which were requested for Laboratory testing from the Spokane P.D. Property Room to the WSP Laboratory.

Buy #2:

CI 94-071 - Will testify to purchasing heroin on 11/1/94 after arranging to do so from defendant RODRIGUEZ [*sic*]. The CI will testify to telephoning [REDACTED] and to the authorization of that telephone call being recorded. He/she will state that he/she asked to speak to GINO and that that subject did get on the telephone and agreed to the purchase of heroin and cocaine by the CI. The CI will add that the location was designated as being [REDACTED]. This individual will also state that a second call was placed to [REDACTED] to solidify what was to be purchased and that at that time a male other than RODRIGUEZ [*sic*] answered the phone and indicated that RODRIGUEZ [*sic*] could not come to the phone as he was unavailable. The subject identified himself as "DAN and this individual solidified what was to be purchased. The CI will also testify to observing a police file photo of one DANIEL MENDOSA and to providing a tentative identification of that subject as the "DAN" who delivered to the CI on this date. The CI will further testify to arriving at the designated location and placing another call to [REDACTED] to learn that the

substance would be delivered within a short period of time. The CI will further state that he/she observed a dark colored Honda pull up next to his/her vehicle and to receiving an indication from DAN to enter that vehicle. The CI did enter the vehicle where the transaction occurred and exited it and returned to the Public Safety Building. The CI will state that he/she immediately presented the purchased substance to Detective Boardman who had surveiled him/her to the Public Safety Building.

DETECTIVE BOARDMAN - Will testify to receiving an audio intercept authorization to record the conversation between the CI and those subjects who answered [REDACTED]. This detective will testify to observing the CI dial [REDACTED] and hearing his/her end of the conversation during both calls made to that number at the Public Safety Building. She will further state that she surveiled the CI he/she traveled to the designated location and was contacted by a male subject in a dark colored Honda Civic. She will state that she observed the CI enter that vehicle, exit it and then leave the parking lot. Detective Boardman will further relate that she followed the CI, who had contact with no other individuals, back to the Public Safety Building and took possession of the purchased substance. She will further clarify that she conducted a field-test of the substance and received a POSITIVE conclusion for heroin, a controlled substance, after which time it was initialed, packaged and placed on the Property Book by her.

DETECTIVES McCABE & HILL - Will testify to conducting searches of the CI and his/her personal vehicle before and after the transaction and finding no unauthorized items or monies on their person or in their vehicle. They will also testify to assisting in the surveillance of

the suspect vehicle as it left [REDACTED], made contact with the CI and returned to [REDACTED]. They will also testify to providing the vehicle license number of the suspect vehicle as being [REDACTED].

DETECTIVE WILLARD - Will testify to assisting in this controlled activity, primarily in terms of maintaining a visual on the suspect house at [REDACTED]. He will state that following the transaction and after receiving a description of the suspect vehicle, he did observe this vehicle park in the area of [REDACTED] and that a male exited the vehicle and walked up on the porch of [REDACTED]. He will further clarify that although he did not observe this subject actually walk into the house, that he did observe the subject on the porch and that the door closed and no longer being able to see the suspect "DAN".

DETECTIVE GRUMBLY - Will testify to observing the subject, later identified as DANIEL MENDOSA, leave [REDACTED]. He will clarify that although he did not see MENDOSA enter a specific vehicle, he did notice in a timely fashion the illumination of headlights on a vehicle parked in front of the suspect residence and provided that information to other SIU surveillance who were abler to observe that vehicle and provide trialing [*sic*] surveillance of it.

SGT. YATES - Will testify to participating in this activity in a supervisory/surveillance capacity.

DETECTIVE JOHNSON - Will testify to transporting those items which were submitted for Laboratory testing from the SPD Property Room to the WSP Laboratory.

BUY #3:

C.I. 94-071 - Will testify to working with SPD/SIU on 11/10/94 to purchase controlled substances from defendant RODRIGUEZ [*sic*]. He/she will testify to calling telephone number [REDACTED] and to a female answering that telephone call. The CI will testify to asking for GINO and being advised that GINO was "busy". The CI will state that the female identified herself as "SHANNON" and that the CI did order heroin from SHANNON and agreed to meet her in the area of Maple & N.W. Blvd. The CI will testify that he/she did travel to that area and placed another telephone call to [REDACTED] and was advised that SHANNON was "on her way". The CI will testify that a female arrived in the same vehicle in which a delivery had been made by DANIEL MENDOSA on 11/1/94. The CI will clarify that eye contact was made with this female, later identified as SHANNON TIMM, and that the CI exited his/her vehicle and joined Ms. TIMM in the suspect vehicle where the transaction of prerecorded currency for heroin occurred. The CI will testify that he/she re-entered his/her own vehicle and was trailed to the Public Safety Building by Detective Boardman where the purchase substance was delivered to her. The CI will further clarify that on 11/11/94 he/she was shown a photograph of DANIEL MENDOSA to determine if that was the "DAN" of the purchase made on 11/1/94. The CI will testify that his/her response to the picture was "That looks like him". The CI indicated that at the time of the

delivery, that the suspect did not have glasses and that this changed the appearance of the suspect in the photo.

DETECTIVE BOARDMAN - Will testify to observing the CI dial [REDACTED] and talking to a subject who was subsequently identified as SHANNON TIMM. She will testify that she heard the CI arrange to purchase $50 worth of heroin in the area of Maple & N.W. Blvd. She will testify that she observed the contact between the CI and SHANNON TIMM when the latter drove into the area and drove to the CI's location. She will further testify that she searched the CI's vehicle before and after this transaction and found it clear of unauthorized items or monies. She will further state that she received the purchased substance from the CI after trailing him/her from the transaction location to the Pubilc Safety Building. She will further state that the substance was field-tested and was POSITIVE for the presence of heroin and at that time the detective packaged and initialed the substance, which was placed on the Property Book by Detective Hill.

LT. BRAUN - Will testify to assisting in surveillance during this controlled substance activity. He will further state that he assisted when patrol units stopped the suspect vehicle after it arrived at [REDACTED] following the transaction and then departed again with a male driver. He will report that he advised the driver, identified as DANIEL MENDOSA, of his constitutional rights at the time of the traffic stop and to that individual invoking his rights. He will testify that based on the buy on 11/1/94, that MENDOSA was arrested for Delivery of a Controlled Substance and booked into Jail.

DETECTIVE WILLARD - Will testify that upon observing DANIEL MENDOSA when the suspect vehicle was stopped by patrol that he positively identified him as the subject he had witnessed exit the suspect vehicle and walk onto the porch of [REDACTED] during BUY #2 on 11/1/94. He will also testify to assisting in surveillance of the CI and suspects in BUY #3.

DETECTIVE QUIST - Will testify to assisting in surveillance of the primary players during this controlled substance activity.

SGT. SCHERES - Will testify to providing surveillance assistance during this controlled substance activity, specifically as to observing SHANNON TIMM in the suspect vehicle leave the area of Maple & N.W. Blvd. and return to [REDACTED] where Ms. TIMM exited the vehicle and entered that residence.

DETECTIVE GRUMBLY - Will testify to searching the CI before and after this activity and to finding no unauthorized items or monies on his/her person.

DETECTIVE JOHNSON - Will testify to transporting those items that were submitted for Laboratory testing from the SPD Property Room to the WSP Laboratory.

SEARCH WARRANT #1:

DETECTIVE BOARDMAN - Will testify to seeking and obtaining a search warrant for [REDACTED] on 11/10/94. She will also testify that she assisted in making entry into that residence by knocking on the door. After receiving an answer from defendant RYAN who opened the door, Boardman did assist in announcing "Police, search warrant". She will further testify to interviewing defendant RYAN after being advised that

Detective Hill had provided her with Miranda warnings and that she had waived those rights. She will testify as to the results of that interview with Ms. RYAN, during which time she stated that she and her husband, JOHN RYAN, made daily stops to this residence to purchase heroin and cocaine from GINO RODRIGUEZ [*sic*]. She will also testify that Ms. RYAN admitted that she had thrown a small quantity of heroin wrapped in plastic behind a television located on the floor in the hallway. She will also advise that Ms. RYAN was placed under arrest for Possession of a Controlled Substance and booked into Jail on that charge. This detective will also state that during the time of this search warrant execution, she personally answered the telephone, with the number being [REDACTED], on three occasions in which the caller ordered heroin. On at least one of those occasions, Detective Boardman agreed to meet the caller in the vicinity to sell them $50 worth of heroin. (This meeting never occurred). During one of the other calls, the subject identified herself as "RENE" and the voice was familiar to this detective as belonging to one RENE CLINE, a subject on whom a search warrant had been executed in July of 1994 for controlled substance violations. This detective had knowledge that RENE CLINE and GINO RODRIGUEZ [*sic*] were at the very least associates in the distribution of controlled substances. This detective will also testify that Officer Hensley provided her with heroin that was found on GINO RODRIGUEZ'S [*sic*] person by Corrections Officer Cepeda at Jail. She will testify that based on the telephone calls and recorded conversations between the CI and GINO or his "runners" and as to the content of those conversations, and those "runners" who delivered the controlled substances entering and exiting [RE-

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DACTED], that GINO RODRIGUEZ [*sic*] was arrested for 8 counts of CONSPIRACY TO DELIVER A CONTROLLED SUBSTANCE (HEROIN & COCAINE), one count of POSSESSION OF A CONTROLLED SUBSTANCE, and an additional charge of POSSESSION OF A CONTROLLED SUBSTANCE (HEROIN) WITH INTENT TO DELIVER based on the packaging materials and amount of heroin found in GINO RODRIGUEZ'S [*sic*] bedroom pursuant to the search warrant.

DETECTIVE HILL - Will testify to making entry, utilizing the "knock and announce" rule with Detective Boardman when the search warrant was executed at [REDACTED]. He will further testify that he observed DEANNA TORGESON at the east window of the northeast bedroom, trying to open it when entry was taking place. He will further state that he found a syringe which contained a brown liquid on the floor of this bedroom, as well as a baggie which contained a substance that appeared to be heroin, on a desk in this same room. Also in this room, Detective Hill found a plate under the desk which contained brown particles that had the same consistency and appearance of heroin. Detective Hill will advise that he assisted in seizing this evidence and placing it with Detective Grumbly for Property Room storage. Detective Hill will clarify that DEANNA TORGESON was definitely in this room and within very close proximity to the syringe and other paraphernalia which was found in the room and on the bedroom window sill which it appeared she was trying to open when SPD announced itself for entry. This detective will advise that he read CR's to DEANNA TORGESON who invoked those rights and to GINO RODRIGUEZ [*sic*] who waived those rights. He will testify as to GINO

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RODRIGUEZ [*sic*] claiming that any drugs found in the house belonged to him. Detective Hill will also state that he advised DEBORAH RYAN of her constitutional rights and that she waived those rights. He will further state that defendant RYAN admitted to throwing the piece of plastic containing heroin behind the TV placed on the floor of the hall. He will also relate other information provided by defendant RYAN reference her activity in purchasing heroin from GINO RODRIGUEZ [*sic*] and in assisting Mr. RODRIGUEZ [*sic*] in the distribution of heroin and cocaine.

TIM DO - Will testify to working with SIU/SPD as an intern in the criminal law program offered by Eastern Washington University. He will testify that he accompanied SIU in the execution of the search warrant on 11/10/94 at [REDACTED]. He will further state that when entry was made, he did observe defendant RYAN throw an object behind a television which was on the floor of the entry hallway. He will state that he passed this information on to Officer Hensley as well as SIU detectives.

OFFICER HENSLEY - Will testify that TIM DO indicated that he had observed defendant RYAN throw an object behind the television. He will testify that that object was a small piece of heroin wrapped in cellophane. He will also testify that he transported GINO RODRIGUEZ [*sic*] to the Spokane County Jail and was present when Correction Officer Cepeda found a quantity of heroin wrapped in plastic in the left front pants pocket of GINO RODRIGUEZ [*sic*] pursuant to an administrative search. Officer Hensley will state that he took possession of this item and transported it to Detective Boardman at the SIU Office.

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DETECTIVE WILLARD - Will testify that he assisted in execution of the search warrant on 11/10/94 and as a perimeter unit, did observe defendant RODRIGUEZ [*sic*] at the east side window of the northeast bedroom at the time when the warrant was executed. He will also state the RODRIGUEZ [*sic*] held an item in his hand and appeared as though he was preparing to throw it out of the window. Detective Willard will state that he instructed defendant RODRIGUEZ [*sic*] to "Hold it" and that at that time RODRIGUEZ [*sic*] retreated from the window. Detective Willard will state that he assisted in the search of this bedroom and did observe what appeared to be heroin on a plate near a desk in that room, as well as small pieces of plastic containing what appeared to be heroin. He will also clarify that he seized dominion & control papers from this room, as well as the aforementioned evidentiary items, and presented them to Detective Grumbly and Detective Johnson for placement on the Property Book.

DETECTIVE QUIST - Will testify to assisting in execution of the warrant and to primarily handling the minor children that were present on the upstairs level of this house. He will testify to observing and seizing paraphernalia items, to include a beer can which was obviously used to smoke marihuana and it did, in fact, have residue on it. He will also testify that he did seize documents that contained telephone numbers and notes which were indicative of an accounting system with the numbers belonging to names that were familiar to SIU as being involved in drug distribution in Spokane.

LT. BRAUN - Will testify to removing a wallet from GINO RODRIGUEZ's [*sic*] person incident to arrest

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and to finding two of the prerecorded $20 bills on his person that were used during BUY # 3.

DETECTIVE McCABE - Will testify to seizing dominion & control papers which were located in the dining room indicating that RODRIGUEZ [*sic*] and TORGESON did reside at this residence. He will also testify to seizing a needle and substance which appeared to be heroin which had been thrown behind the television. Detective McCabe will testify that this item was field-tested and was POSITIVE for the presence of heroin. That detective will also state that he answered two telephone calls to this address, that number being [REDACTED], during which the callers asked to purchase controlled substances. He will specifically testify to the terminology utilized by those callers to indicate that was the purpose of the phone call.

SGT. SCHERES - Will testify that on his assignment as a perimeter unit when the warrant was being executed, that he did observe defendant RODRIGUEZ [*sic*] at the east window of the northeast bedroom appearing to attempt to throw something out of the window. He will further state that he secured dominion & control papers and insured that they were placed on the Property Book.

OFFICER McGREGOR - Will testify that he did take photographs of the residence and those present when the search was executed.

DETECTIVE JOHNSON - Will testify to assisting in execution of the search warrant, specifically in entering property onto the property sheet as officers seized it. He will also testify that he transported those items which were submitted for WSP Lab testing, from the SPD storage unit to the Property Room.

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BUY # 4 (SPD REPORT # 95-01134)

BUY # 4 (SPD REPORT # 95-01134)

PROPERTY #114587:

C.I. 95-003 - Will testify that he/she worked with

C.I. 95-003 - Will testify that he/she worked with SIU/SPD on 1/10/95 to purchase heroin from defendant RODRIGUEZ [*sic*] through an associate, DONALD BURNS. The CI will testify that he/she was searched before and after this activity and was clear of unauthorized items or monies. The CI will testify that he/she was transported to the area of Maple & Maxwell where he/she met with DONALD BURNS as was prearranged. The CI will further state that he/she walked with DONALD BURNS to the general location of [REDACTED] where the CI presented BURNS with prerecorded currency to purchase heroin from GINO RODRIGUEZ [*sic*] at [REDACTED]. The CI will testify that he/she had met GINO RODRIGUEZ [*sic*] at that address one day prior to this controlled substance activity. The CI will testify that after a period of time, he/she was contacted by the control officer who advised him/her that BURNS had been surveilled entering and leaving RODRIGUEZ'S [*sic*] house and going to another location. The CI will state that under direction of SIU/SPD, he/she contacted RODRIGUEZ [*sic*] at [REDACTED] to learn of BURNS' destination. The CI will testify that RODRIGUEZ [*sic*] advised him/her that BURNS had purchased one gram of heroin and been fronted a second gram to sell on RODRIGUEZ'S [*sic*] behalf. The CI will state that he/she saw approximately 40 grams of individually packed pieces of heroin in a small box located on an end table in the living room where RODRIGUEZ [*sic*]

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was lying on a couch. The CI will further testify that upon leaving RODRIGUEZ'S [*sic*] location, he/she was transported to [REDACTED] and made contact with BURNS who did eventually present him/her with one gram of heroin, reportedly purchased from GINO RODRIGUEZ [*sic*]. The CI will further state that he/she was shown a photo montage including GINO RODRIGUEZ [*sic*] in March of 1995. The CI will state that he/she was able to narrow the 6-pack down to two possible suspects, but was unable to positively identify RODRIGUEZ [*sic*], as he/she had not seen that individual since 1/10/95.

DETECTIVE BOARDMAN - Will testify that she conducted a search of the CI before and after this activity and found him/her clear of unauthorized items or monies. She will further state that she transported the CI to the general area of [REDACTED] and then to [REDACTED] where the transaction with BURNS was finally completed. The CI immediately returned to her and presented that detective with the purchased substance. Detective Boardman transported this substance to the Public Safety Building where Detective Quist conducted an inconclusive field-test. Detective Boardman packaged, initialed and transported the purchased item to the Property Room for storage. Detective Boardman will further state that she requested and obtained a search warrant for [REDACTED] based on BUY #4 and other activities which involved GINO RODRIGUEZ [*sic*] at this address. She will testify that she conducted an interview with DEANNA TORGESON who was present at the search warrant after Ms. TORGESON waived her constitutional rights. She will relate the results of that interview, specifically Ms. TORGESON's remark

that any drugs found in the residence would belong to GINO RODRIGUEZ [*sic*] as she was no longer using any controlled substances.

DETECTIVE QUIST - Will testify to assisting in surveillance of the controlled purchase involving the CI, DONALD BURNS and GINO RODRIGUEZ [*sic*]. He will testify to observing the initial meeting between the CI and BURNS in the area of Maple and Maxwell. He will also testify to assisting in the execution of the search warrant.

DETECTIVE BURBRIDGE - Will testify to assisting in execution of the search warrant and to finding specific drug paraphernalia in the residence. He will clarify the exact locations in which drug paraphernalia was found and seized, specifically a piece of cellophane/plastic which contained brown residue. This item was found in the kitchen cupboard. Detective Burbridge will advise that those items he found were presented to Detective Grumbly for placement on the Property Book.

SGT. YATES - Will testify that he assisted in the surveillance of the involved parties during the controlled substance buy. He will specifically state that he surveilled the CI and DONALD BURNS as they walked in the general area of [REDACTED]. He will further state that when advised by Detective Johnson that DONALD BURNS had left the residence at [REDACTED] and was westbound from that location on the bicycle, that he provided a trailing surveillance of BURNS and did witness him enter [REDACTED]. Sgt. Yates will testify that upon completion of the transaction at [REDACTED] between the CI and DONALD BURNS, that he then assisted in the execution of the

search warrant later on this date. He will testify tht he did answer the telephone on at least one occasion and received a request from an individual who identified himself as "JIM" for a quarter piece of heroin. Sgt. Yates will testify that "JIM" asked specifically for GINO but did agree to the deal with Sgt. Yates when advised that GINO was not available. He will further relate the results of that telephone call in that an exchange was made with a subsequent arrest.

DETECTIVE WILLARD - Will testify that he assisted in the surveillance during the controlled buy and did observe DONALD BURNS exit GINO RODRIGUEZ'S [*sic*] residence after the prerecorded currency had been fronted to him for the purchase of heroin by the CI. He will also testify to providing surveillance when the transaction was completed at [REDACTED]. Detective Willard will also state that he assisted in the execution of the warrant later on this date and did assist in the search of the residence. He will also indicate his role in the subsequent agreement to sell controlled substances to the subject who identified himself to Sgt. Yates as "JIM".

DETECTIVE JOHNSON - Will testify that he assisted in providing surveillance of the controlled substance buy. He will testify that he saw DONALD BURNS exit the yard of [REDACTED] on a bicycle after BURNS had received the prerecorded currency from the CI to contact GINO RODRIGUEZ [*sic*] at that address and purchase heroin. He will testify that he provided some trailing surveillance of BURNS as he traveled to 614 W. Sinto. Detective Johnson will also testify that when the CI contacted RODRIGUEZ [*sic*] at that address, that he

observed the CI enter and exit that residence when he/she had been released from the control vehicle.

DETECTIVE GRUMBLY - Will testify to assisting in surveillance of the controlled substance activity and also to the execution of the search warrant. He will testify that he logged seized property onto the property book during the search warrant activity and that he also accompanied Detective Boardman with the seized property to the Public Safety Building. He will testify that both detectives placed the relevant items to be tested in the appropriate packaging and transported it to the Property Room.

LT. BRAUN - will testify to assisting in surveillance of the controlled substance activity and specifically to assisting in the trailing surveillance of DONALD BURNS when he left [REDACTED] and traveled to [REDACTED].

WSP CHEMIST MELNIKOFF - Will testify to testing those items that were submitted under report #94-085326 and Property #112099. He will testify that in BUY #1, Item #1 contained heroin and Item #2 contained cocaine, both of which are controlled substances. He will also testify that he conducted the tests on Items Nos. 7 and 8 from BUY #3. He will relate that Item #7 contained heroin, a controlled substance, and that the residue from Item #8 was in insufficient amount to substantiate that it was heroin. This chemist will further testify that for BUY #4 and the subsequent search warrant, that he tested Items 17, 21, 36, and 37 and received a POSITIVE reading for heroin in all of those items.

WSP CHEMIST FORTNEY - Will testify that he tested Item #4 submitted for BUY #2. He will state that Item

#4 contained heroin, a controlled substance. He will also testify that he conducted the Laboratory tests for Item #1 submitted under report #95-001134 and Property #114587. He will testify that Item #1 did contain heroin, a controlled substance. (This would be considered BUY #4).

Chemist Fortney will also testify that he conducted Laboratory tests on those items submitted for Search Warrant #2 conducted on 1/10/95. He will indicate that Item #4 was the only item which tested POSITIVE and that it contained heroin residue.

I testify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. (9A.72.085)

Date: 4/21/95 PLACE: Spokane P.D.

SIGNATURE: /s/ LL BOARDMAN
LL BOARDMAN

[Gov't Exh. 8]

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 95-1-01089-1

PA# 95-9-89758-4
RPT# 02-94-17171-0
RCW 69.50.401(a)D-F (#56002)

STATE OF WASHINGTON, PLAINTIFF

v.

GINO GONZAGA RODRIQUEZ, WM [REDACTED],
DEFENDANT(S)

[Filed: Nov. 21, 1995]

JUDGMENT AND SENTENCE
(FELONY)

I. HEARING

1.1 A sentencing hearing in this case was held: *11-16-95*
date

1.2 Present were:

Defendant: GINO GONZAGA RODRIQUEZ
Defendant's Lawyer: PAUL WASSON
Deputy Prosecuting Attorney:
DIANNE G. DOUGHERTY
Other:

1.3 The State has moved for dismissal of Count (s) __ _____.

1.4 Defendant was asked if there was any legal cause why judgment should not be pronounced, and none was shown.

II. FINDINGS

Based on the testimony heard, statements by defendants and/or victims, argument of counsel, the presentence report and case record to date, the court finds:

2.1 CURRENT OFFENSE (S): The defendant was found guilty on *11-16-95* by [plea] ~~[verdict] [jury] [non jury]~~ of:

Count No.: I Crime: DELIVERY OF A CONTROLLED SUBSTANCE NARCOTIC FROM SCHEDULE III-V
RCW 69.50.401(a)D-F (#56002)
Date of Crime March 29, 1994
Incident No. 02-94-17171-0

Count No.: __ Crime:_____
RCW _____
Date of Crime _____
Incident No _____

Count No. : __ Crime: _____
RCW _____
Date of Crime _____
Incident No. _____

( ) With a special verdict/finding for use of deadly weapon on Count (s): (RCW 9.94A.125)

( ) With a special verdict/finding of sexual motivation on Count (s): _____. (RCW 9.94A.127)

( ) with a special verdict/finding of RCW 69.50.401(a) violation in a school bus or within 1000 feet of a school bus route stop or 1000 feet of the perimeter of a school grounds. (RCW 69.50.435)

( ) Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

( ) Additional current offenses attached in Appendix A.

2.2 CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Type
PCS with intent Dist.	*current*	*A*	*11-10-94*	*drug*
DCS	"	*A*	*12-29-94*	*drug*
PCS	"	*A*	*1-10-95*	*drug*

( ) Additional criminal history is attached in Appendix B.

( ) Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)):

2.3 SENTENCING DATA:

	Offender Score	Seriousness Level	Range	Maximum Term
Count No. *I*	*7*	*IV*	*43-57 mons*	*10 years*
Count No. _	____	___	_____	_____
Count No. _	____	___	_____	_____

( ) Additional current offenses sentencing information is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

( ) Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in Appendix D. (RCW 9.94A.390)

2.5 CATEGORY OF OFFENDER: The defendant is:

(a) (x) An offender who shall be sentenced to confinement of over one year.

(b) ( ) An offender who shall be sentenced to confinement of one year or less.

(c) ( ) A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.030(20), .120(5)).

(d) ( ) A sexual offender who is eligible for the special sentencing alternative and who shall be sentenced under the alternative

because both the defendant and the community will benefit from its use (RCW 9.94A.120(7)(a)).

(e) ( ) A felony sexual offender who shall be sentenced to confinement of over one year but less than six years and shall be ordered committed for evaluation of defendant's amenability to treatment (RCW. 9.94A.120(7)(b)).

(f) ( ) A persistent offender as defined in 9.94A.030(25) who shall be sentenced in accordance with 9.94A.120(4) to total confinement for life without the possibility of parole.

III. JUDGMENT

IT IS ADJUDGED that the defendant is guilty of the crime(s) of: DELIVERY OF A CONTROLLED SUBSTANCE - NARCOTIC FROM SCHEDULE III-V

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the conditions set forth below.

4.1 The Court, having examined the defendant's ability to pay monetary obligations, makes the following findings:

(x) The defendant [does] **[does not]** have the present ability to pay toward financial obligation herein.

(x) There [is] [is not] a likelihood of the defendant having a future ability to pay toward financial obligations herein.

(x) Defendant shall pay the following legal financial obligation to the Clerk of the Court:

(a) $110.00, Court costs; (RCW 36.18.020(18))

(b) $100.00 Victim Assessment; (RCW 7.68.035)

(c) ( ) $_____, Restitution [per schedule to be filed];

( ) $_____, Restitution for emergency response of a public agency; to-wit:

(38.52);

( ) $_____, Restitution to

for costs of

extradition; (.94A.030(10)(25))

( ) (d) $ _____, Recoupment for attorney's fees;

(x) (e) $100.00 state crime laboratory fee for each offense for a total of $*100.00*. The crime(s) for which the defendant has been adjudged guilty herein involve(s) a state crime laboratory analysis. (RCW 43.43.690)

( ) Upon a verified petition by the defendant relating to his/her ability to pay

the fee, the court suspends $ ___ of said fee.

( ) (f) $125.00 state toxicology laboratory fee. (RCW 46.61.515)

( ) Upon a verified petition by the defendant relating to his/her ability to pay the fee, the court suspends $ _____ of said fee.

(✓) (g) $*1,000.00*, Fine; [ ] VUCSA additional fine waived due to indigency (RCW 69.50.430)

( ) (h) $ _____ Drug enforcement fund of ____. (RCW 69.50.520)

( ) (i) $ _____, Other costs for:

( ) The defendant (does) (does not) have the means to pay for the costs of incarceration.

( ) The defendant shall pay the costs of incarceration at the rate of $50.00 per day. (RCW 9.94A.145(2))

$ *1,310.00* , TOTAL legal financial obligations.

Commencing with the first full month after the date of this Judgment and Sentence or after release from confinement, the defendant shall pay not less than $ *set by DOC* per month, subject to adjustment by the court as necessary upon the recommendation of the community corrections officer, to the Clerk of the Court until the total legal financial obligation is paid in full (with credit for amounts paid by co-defendants), to be paid in full by *11/16/2005* with a report by the Department of Corrections to be submitted to the court by *11-16-2001*.

The Department of Corrections shall monitor all assets and earnings of the defendant while s/he is confined and shall deduct appropriate amounts to be forwarded to the Clerk of the Court to satisfy the court-ordered legal financial obligation as provided for herein.

Upon receipt, the Clerk of the Court shall distribute the restitution to:

( ) Schedule of restitution is attached as Appendix E.

( ) Schedule of Restitution to be filed.

( ) A notice of payroll deduction is to be immediately issued. (RCW 9.94A.145(3))

(✓) A notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the defendant if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed. (RCW 9.145A3)

The court shall retain jurisdiction over the defendant for the greater of ten (10) years, subject to the adjustment by the court, from the date of this Judgment and Sentence or from the defendant's last date of release from confinement pursuant to a felony conviction to assure payment of the above legal financial obligations. The defendant shall report to the Department of Corrections to monitor compliance, and obey conditions as provided by RCW 9.94A.120(12) and RCW 9.94A.94A.145. Provided further, the Department of Corrections shall assist the court in setting or modifying the minimum monthly sum, when necessary, by investigating and reporting to the court on the monthly amount the offender

should pay toward said legal financial obligation, considering the defendant's financial cirmstances, capabilities, and assets as determined under the provisions of RCW 9.94A.145.

( ) The defendant has been found guilty of an offense involving fraud or a deceptive practice and shall give notice of the conviction to the class of persons or sector of public affected or financially interested in the subject of the offense; to-wit: by mail, advertising or through the media as designated, to-wit:

4.3 CONFINEMENT OVER ONE YEAR: The defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commending *1 Nov*, 19*95*:

48 months for Count No. *I*

_____ months for Count No._____

_____ months for Count No. _____

( ) The terms in Counts No. _____ to be concurrent for a total term of _____ months.

( ) The terms in Counts No. _____ to be consecutive for a total term of _____ months.

(✓) The sentence herein to run **(concurrently)** (consecutively) with the sentence in *95-1-01070-0, 95-1-01071-8*
(Count(s) or cause number(s))

(✓) Credit be given for (time) (*170* days) served solely on these charges.

( ) Confinement in a work ethic camp is recommended if defendant is eligible. (RCW 9.94A.137).

( ) Upon completion of the Work Ethic Camp, defendant shall be released on community custody for any remaining time of total confinement.

(✓) The defendant is sentenced to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of earned early release, according to the conditions set out in Appendix G.

( ) This being a [sex offense] [serious violent offense] committed on or after July 1, 1990, the defendant is sentenced to community placement for two (2) years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, beginning either upon completion of the term of confinement or at such time the defendant is transferred to community custody in lieu of earned early release, according to the conditions set out in Appendix G.

( ) The defendant, having been convicted of a felony sex offense, shall register with the County Sheriff where the defendant resides within twenty-four (24) hours of release from confinement and/or placement on community supervision as a convicted sex offender.

4.4 (✓) Pursuant to RCW 70.24.340 the defendant shall submit to HIV testing as soon as possible,

be provided pre-test counseling and be provided post-test counseling for the reason that:

( ) The offense herein is a sexual offense under RCW 9A.44.

( ) The offense herein is a prostitution offense or related to prostitution under RCW 9A.88.

( ) The offense herein is a drug offense under RCW 69.50 and it is determined by the court that the related drug offense is one associated with the use of hypodermic needles.

Provided further the results of the HIV test are to be confidential but are to be provided to the victim, prosecuting attorney, community corrections officer and the public defender as necessary.

4.5 ( ) Pursuant to RCW 43.43.754, the defendant shall have a blood sample drawn for purposes of DNA identification analysis prior to his/her release from a department of corrections facility, this conviction being for:

( ) A felony defined as a sex offense under RCW 9.94A.030(29)(a).

( ) A violent offense as defined under RCW 9.94A.030(32).

The following appendices are attached to this Judgment and Sentence and are incorporated by reference:

(✓) Appendix A, Understanding of Defendant's Criminal History

( ) Appendix B, Additional Criminal History

( ) Appendix C, Understanding of Defendant's Criminal History

( ) Appendix D, Findings of Fact and Conclusions of Law for Exceptional Sentence

( ) Appendix E, Schedule of Restitution

( ) Appendix F, Additional Conditions

(✓) Appendix G, Conditions of Community Placement

( ) Appendix H, Order Prohibiting Contact

( ) Appendix I, Notification of Registration Requirement

(x) Appendix J, Advice of Time Limit for Filing Collateral Relief

Date: *11/16/95*

/s/ TARI S. EITZEN
Judge TARI S. EITZEN
Approved as to form:

Presented by:

/s/ DIANNE G. DOUGHERTY
DIANNE C. DOUGHERTY
Deputy Prosecuting Attorney
WA State Bar ID #: *16021*

/s/ PAUL WASSON
PAUL WASSON
Lawyer for Defendant
WA State Bar ID #: *5854*

FINGERPRINTS

Right Hand
Fingerprints of:

GINO GONZAGA RODRIQUEZ

ADDRESS:

Attested by:

THOMAS R. FALLQUIST, County Clerk

By: , deputy

Dated:

By:

CERTIFICATE

I, _____
Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: _____

_____
Clerk

By: _____
Deputy Clerk

OFFENDER IDENTIFICATION

S.I.D. NO. 14653368
Date of Birth 07 26 62
Sex MALE
Race WHITE
ORI WA032013A
OCA 150616
OIN 02-94-17171-0
DOA 05 18 95

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 95-1-01089-1

PA# 95-9-89758-4
RPT# 02-94-17171-0
RCW 69.50.401(a)D-F (#56002)

STATE OF WASHINGTON, PLAINTIFF

v.

GINO GONZAGA RODRIQUEZ, WM [REDACTED],
DEFENDANT(S)

[Filed: Nov. 21, 1995]

STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO A FELONY

I. STATEMENT OF DEFENDANT

1. My true name is *Gino G. Rodriquez*. I am also known as *n/a* _____.
2. My age is *33*. Date of birth [REDACTED] _____.
3. I went through the _____ grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
   (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer,

one will be provided at no expense to me. My lawyer's name is PAUL WASSON.

(b) I am charged with the crime(s) of: DELIVERY OF A CONTROLLED SUBSTANCE - NARCOTIC FROM SCHEDULE III-V, and the elements of the crime(s) are: *In Spokane, Washington, knowingly delivered a narcotic*.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself.

(c) The right at trial to hear and question witnesses who testify against me.

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.

(e) I am presumed innocent until the charge is proven beyond a reasonable doubt, or I enter a plea of guilty.

(f) The right to appeal certain pretrial court decisions and any determination of guilt after trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) The crime with which I am charged carries a maximum sentence of ___ years imprisonment and a $ *20,000* fine. The standard sentence range is from *43* months to *57* months confinement, based on the prosecuting attorney's understanding of my criminal history.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions in juvenile court for felonies or serious traffic offenses that were committed when I was 15 years of age or older. Juvenile convictions, except those for class A felonies, court only if I was less than 23 years old when I committed the crime to which I am now pleading guilty.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard range and the prosecuting attorney's recommendation increase.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay $ *100* as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the following recommendations to the judge: *Amend this information; dismiss several other counts; allow me to ask for low end of SRA range and ask for a furlough.*

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the court finds substantial and compelling reasons not to do so. If the court goes outside

the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

* * * * *

7. I plead *guilty* to the crime(s) of DELIVERY OF A CONTROLLED SUBSTANCE - NARCOTIC FROM SCHEDULE III-V, as charged in the [Amended] information. I have received a copy of that Information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement: *I am charged with several counts in 3 separate informations. There are facts in there to convict me on some counts.*

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

/s/ GINO RODRIQUEZ
GINO RODRIQUEZ
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

/s/ DIANNE G. DOUGHERTY
DIANNE G. DOUGHTERY
DEPUTY PROSECUTING ATTORNEY
WA State Bar ID #: *1602*

/s/ PAUL WASSON
PAUL WASSON
DEFENDANT'S LAWYER
WA State Bar ID # *5854*

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]

☒ the defendant had previously read

or

☐ the defendant's lawyer had previously read to him or her

or

*☐ an interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently, and voluntarily made. Defendant understands the charge and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this *16* day of *Nov.*, 19*95*

/s/ TARI S. EITZEN
Judge TARI S. EITZEN

* I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language which the defendant understands, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his/her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, 19 _____.

_____

INTERPRETER

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 95-1-01089-1
DIANNE G. DOUGHERTY
Deputy Prosecuting Attorney

PA# 95-9-89758-4
RPT# 02-94-17171-0
RCW 69.50.401(a)D-F (#56002)

STATE OF WASHINGTON, PLAINTIFF

v.

GINO GONZAGA RODRIQUEZ WM [REDACTED],
DEFENDANT(S)

[Filed: Nov. 21, 1995]

AMENDED INFORMATION

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crimes(s):

DELIVERY OF A CONTROLLED SUBSTANCE, committed as follows: That the defendants, GINO GONZAGA RODRIQUEZ AND BYRON LESLIE GRENDAHL, in Spokane County, Washington, on or about March 29, 1994, did knowingly deliver a controlled substance, to-wit: a narcotic from Schedule III-V,

/s/ DIANNE G. DOUGHTERY
DIANNE G. DOUGHTERY
Deputy Prosecuting Attorney

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 95-1-01089-1
DIANNE G. DOUGHERTY
Deputy Prosecuting Attorney

PA# 95-9-89758-4
RPT# 02-94-17171-0
CT I & III: 69.50.401(a)D-F (#56002)
CT II & IV: 69.50.401(a) DCO-F
(69.50.407) (#56610)
CT V: 69.50.401(c)-F (#56609)
CT VI: 69.53.010-F (#56951)
CT VII-VIII: 69.50.401(d)-F (#56603)
(RODRIQUEZ CT I ONLY)
(B. GRENDAHL CT I & III ONLY)
(W. GRENDAHL CT II, IV & V ONLY)
(NORTON CT III ONLY)
(A. GRENDAHL CT. VI-VIII ONLY)

STATE OF WASHINGTON, PLAINTIFF

v.

GINO GONZAGA RODRIQUEZ WM [REDACTED],
BRYON LESLIE GRENDAHL WM [REDACTED]
WARD GALEN GRENDAHL WM [REDACTED]
ROY MADISON NORTON, SR. WM [REDACTED]
ARLENE MAXINE GRENDAHL WF [REDACTED],
DEFENDANT(S)

[Filed: June 6, 1995]

INFORMATION

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crime(s):

COUNT I: DELIVERY OF A CONTROLLED SUBSTANCE, committed as follows: That the defendants, GINO GONZAGA RODRIQUEZ AND BYRON LESLIE GRENDAHL, in Spokane County, Washington, on or about March 29, 1994, did knowingly deliver a controlled substance, to-wit: heroin,

COUNT II: And the Prosecuting Attorney, as aforesaid, further charges the defendant, WARD GALEN GRENDAHL, with the crime of CONSPIRACY TO DELIVER A CONTROLLED SUBSTANCE, committed as follows: That the defendant, WARD GALEN GRENDAHL, in Spokane County, Washington, on or about March 29, 1994, did unlawfully conspire with others to deliver a controlled substance, to wit: heroin,

COUNT III: And the Prosecuting Attorney, as aforesaid, further charges the defendants BYRON LESLIE GRENDAHL and ROY MADISON NORTON, SR., with the crime of DELIVERY OF A CONTROLLED SUBSTANCE, committed as follows: That the defendants, BYRON LESLIE GRENDAHL and ROY MADISON NORTON, SR., in Spokane County, Washington, on or about March 30, 1994, did knowingly deliver a controlled substance, to wit: heroin,

COUNT IV: And the Prosecuting Attorney, as aforesaid, further charges the defendant, WARD GALEN GRENDAHL, with the crime of CONSPIRACY TO DELIVER A CONTROLLED SUBSTANCE, committed as follows: That the defendant, WARD GALEN GRENDAHL, in Spokane County, Washington, on or

about March 30, 1994, did unlawfully conspire with others to deliver a controlled substance, to wit: heroin,

COUNT V: And the Prosecuting Attorney, as aforesaid, further charges the defendant, WARD GALEN GRENDAHL, with the crime of DELIVERY OF A SUBSTANCE IN LIEU OF A CONTROLLED SUBSTANCE, committed as follows: That the defendant, WARD GALEN GRENDAHL, in Spokane County, Washington, on or about April 6, 1994, did unlawfully offer, arrange and negotiate the delivery of a controlled substance, to wit: heroin, to another person, and did give and deliver to such person another substance in lieu of the controlled substance,

COUNT VI: And the Prosecuting Attorney, as aforesaid, further charges the defendant, ARLENE MAXINE GRENDAHL, with the crime of USE OF A BUILDING FOR UNLAWFUL DRUG PURPOSES, committed as follows: That the defendant, ARLENE MAXINE GRENDAHL, in Spokane County, Washington, on or about April 8, 1994, then and there being, did knowingly allow a building located at [REDACTED], which was under his/her management and control as a lessee, to be used for the unlawful purpose of delivering, selling and storing controlled substance, to wit: heroin,

COUNT VII: And the Prosecuting Attorney, as aforesaid, further charges the defendant, ARLENE MAXINE GRENDAHL, with the crime of POSSESSION OF A CONTROLLED SUBSTANCE, committed as follows: That the defendant, ARLENE MAXINE GRENDAHL, in Spokane County, Washington, on or about April 8, 1994, did unlawfully possess a controlled substance, to wit: heroin,

COUNT VIII: And the Prosecuting Attorney, as aforesaid, further charges the defendant, ARLENE MAXINE GRENDAHL, with the crime of POSSESSION OF A CONTROLLED SUBSTANCE, committed as follows: That the defendant, ARLENE MAXINE GRENDAHL, in Spokane County, Washington, on or about April 8, 1994, did unlawfully possess a controlled substance, to wit: cocaine,

/s/ DIANNE G. DOUGHTERY
DIANNE G. DOUGHTERY
Deputy Prosecuting Attorney
WA St. Bar ID # *16021*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

Court No. 6271

PEOPLE OF THE STATE OF CALIFORNIA

v.

GINO GANZAGA RODRIGUEZ [*sic*], DEFENDANT

[Filed: Nov. 14, 1980]

COMMITMENT TO THE YOUTH AUTHORITY (CRIMINAL)

To the Youth Authority of the State of California:

1. On *October 17*, 19*80*, the person named in this matter was convicted of the following crime(s):

   a. *Burglary* *1* count(s), *second*
   (Burglary arson, etc.) (Number) (degree)
   thereby violating Section *459*, *California Penal Code*.
   (Number)
   (Title of Code or Statute)

   b.

   c.

   d.

2. This person was less than 21 years of age at the time of apprehension *4th* day of *January*, 19*80*, for the above crime(s).

3. The mental and physical condition and qualifications of this person are such as to render it probable that he will be benefited by the reformatory and educational discipline or other treatment provided by the Youth Authority.

THEREFORE, the person named in this matter is hereby committed to the Youth Authority of the State of California for xxxxxxxxxxx two (2) years to be served concurrent with any sentence presently being served.

Dated *Nov. 14 1980*, 19 __ /s/ ILLEGIBLE
Judge

CERTIFICATION

I hereby certify that the foregoing is a correct copy of the original on file in my office.

Date_____, 19__, _____,Clerk

[SEAL] By _____
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

Court No. 6271

PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF

v.

GINO RODRIGUEZ [*sic*], DEFENDANT

[Sept. 19, 1980]

AMENDED
INFORMATION

The District Attorney of the County of Kings hereby accuses GINO RODRIGUEZ [*sic*] of a felony, in that on or about the 4th day of January, 1980, at and in the Hanford Judicial District, County of Kings, State of California, the said defendant did commit a FELONY, namely: violation of Section 459 of the Penal Code of the State of California, in that the said defendant did willfully, unlawfully and feloniously, in the nighttime, enter the inhabited dwelling house of Ernest Filippi located at [REDACTED], with intent to commit theft.

COUNT II

AS A DIFFERENT STATEMENT OF THE SAME CAUSE OF ACTION SET FORTH IN COUNT I ABOVE, the said defendant, did in the above Judicial District, County of Kings, State of California on or about January 4, 1980, commit a(n) FELONY, namely:

violation of Section 496.1 of the Penal Code of the State of California, in that the said defendant did willfully, unlawfully and feloniously receive and conceal and withhold certain property, to wit, television and stereo equipment, which property had been stolen, knowing the same to have been stolen.

Dated this 19th day of September, 1980.

ROBERT R. MALINE
District Attorney

By /s/ PETER M. SCHULTZ
PETER M. SCHULTZ
Assistant District Attorney

[SEAL OMITTED]

This document in which this certificate is affixed is a full, true and correct copy of the original on file and of record in my office

[ILLEGIBLE] *5-21-04*

By /s/ ILLEGIBLE Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

No. 6271

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF

v.

GINO G. RODRIGUEZ [*sic*], DEFENDANT

Date: [illegible], 1980

Judge: Hon. Robert R. Rosson
Reporter: ~~William J. Quilty~~/Victoria L. McNutt
Clerk: Verla R. Crawford
Bailiff: Bill Landis
District Attorney: Robert R. Maline
by Arthur Markham Deputy
Counsel for Defendant: Wayne Hardcastle
Deputy Probation Officer: *Robert Carney*

( ) ARRAIGNMENT (x) CONTINUED ARRAIGNMENT
( ) PRE-TRIAL DISPOSITION
( ) TRIAL READINESS HEARING
( ) FELONY (In ___ Counts) to wit:
( ) MISDEMEANOR

PEOPLE REPRESENTED AS STATED ABOVE: DEFENDANT PRESENT WITH/~~WITHOUT~~ COUNSEL

( ) Defendant ( ) Counsel handed certified copy of ( ) Information ( ) Indictment ( ) _____

( ) Defendant stated true name as shown ( )_____

( ) Clerk read ( ) Information ( ) Indictment ( ) Order Certifying to Superior Court

( ) Court ( ) advised defendant of legal rights, including right to an attorney ( ) defendant wants attorney but has no money to hire one ( ) defendant waives right to an attorney ( ) waives being further advised of legal rights ( ) Court appoints_____

( ) Attorney ( ) present in Court and accepts the appointment ( ) requests a continuance ( ) to study transcript ( ) to make a Motion ( )

( ) Defendant, through counsel moves to set aside Information under Section 995 P.C.

( ) Declaration of defendant and counsel accepted and filed

(✓) Defendant ( ) withdraws plea of_____ ( ) plead guilty as charged in Count __( ) plead guilty of the lesser offense of _____(✓) plead not guilty as to Count ___ ( ) plead guilty by reason of insanity ( ) pleads nolo contendre ( ) waives time to plead

( ) Defendant advised of legal rights and waived same regarding change of plea

( ) Defendant: ( ) admits ( ) denies prior convictions of ( ) felony ( ) being armed

( ) District Attorney requested case be dismissed in the interest of justice

( )

( )

COURT:

( ) ordered matter to be continued to _____ at 8:15 a.m.

() fixed bail at $_____ ( ) fixed the degree of the offense at _____ degree

( ) suspended criminal proceedings and certified matter to civil court, and ( ) appointed Drs. _____ to examine the defendant to determine if he/she is ____ and continued the matter to _____ at 8:15 a.m. _____

( ) certified the defendant back to Criminal Court

( ) suspended proceedings on ground defendant is a minor defendant certified to Juvenile Court

(✓) defendant waived statutory time for *Trial*

(✓) set case for trial on *Oct. 12, 1980* Jury (✓) demanded ( ) waived

( ) referred matter to probation office for report and recommendation and continued matter to _____ for hearing on said report and for sentencing

( ) ordered defendant ( ) remain at liberty on the bail previously posted ( ) be released on own recognizance ( ) remain in custody ( ) be released from custody

( ) ordered case be dismissed as requested ( ) ordered bail be exonerated ( ) ordered trial dates be vacated

(✓) pre-trial conference set for *April 30 1980*

(✓) pre-trial disposition set for *May 7, 1980*

(✓) trial readiness hearing set for *Sept. 19, 1980*

( ) ordered trial dates be confirmed

( )

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

No. 6271

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF

v.

GINO G. RODRIGUEZ [*sic*], DEFENDANT

Date: Sept. 23, 1980

Judge: Hon. Charles W. Jennings
Reporter: William J. Quilty/Victoria L. McNutt
Clerk: Beatrice L. Worley
Bailiff: Lee Reynolds
District Attorney: Robert R. Maline
by/s/ PETER ILLEGIBLE, Deputy
Counsel for Defendant: Wayne Hardcastle
Deputy Probation Officer: *Glenda Fuji*

( ) ARRAIGNMENT ( ) CONTINUED ARRAIGNMENT
( ) PRE-TRIAL DISPOSITION
(x) TRIAL READINESS HEARING
( ) FELONY (In ___ Counts) to wit:
(x) MOTION TO FILE AMENDED INFORMATION and
( ) MISDEMEANOR

PEOPLE REPRESENTED AS STATED ABOVE: DEFENDANT PRESENT WITH/WITHOUT COUNSEL

Amended

(✓) Defendant ( ) Counsel handed certified copy of (✓) Information ( ) Indictment ( ) _____

( ) Defendant stated true name as shown ( )_____

(✓) Clerk read (✓) Information ( ) Indictment ( ) Order Certifying to Superior Court

( ) Court ( ) advised defendant of legal rights, including right to an attorney ( ) defendant wants attorney but has no money to hire one ( ) defendant waives right to an attorney ( ) waives being further advised of legal rights ( ) Court appoints_____

( ) Court appoints _____

( ) Attorney ( ) present in Court and accepts the appointment ( ) requests a continuance ( ) to study transcript ( ) to make a Motion

( ) Defendant, through counsel moves to set aside Information under Section 995 P.C.

( ) Declaration of defendant and counsel accepted and filed

( ) Defendant ( ) withdraws plea of _____ ( ) plead guilty as charged in Count____ ( ) plead guilty of the lesser offense of ____(✓) plead not guilty as to Count _2__ ( ) plead not guilty by reason of insanity ( ) pleads nolo contendre ( ) waives time to plead

( ) Defendant: ( ) admits ( ) denies prior convictions of ( ) felony ( ) being armed

( ) District Attorney requested case be dismissed in the interest of justice
(✓) *A amended information illegible*
(✓) *Defendant illegible advising of constitutional*

COURT:
( ) ordered matter to be continued to _____at 8:15 a.m. _____
( ) fixed bail at $____ ( ) fixed the degree of the offense at _____degree
( ) suspended criminal proceedings and certified matter to civil court, and ( ) appointed Drs._____to examine the defendant to determine if he/she is ____ and continued the matter to _____ at 8:15 a.m. _____
( ) certified the defendant back to Criminal Court
( ) suspended proceedings on ground defendant is a minor, defendant certified to Juvenile Court
( ) defendant waived statutory time for_____
( ) set case for trial on ___Jury ( ) demanded ( ) waived
( ) referred matter to probation office for report and recommendation and continued matter to _____ for hearing, on said report and for sentencing
( ) ordered defendant ( ) remain at liberty or, the bail previously posted ( ) be released on own recognizance ( ) remain in custody ( ) be released from custody
( ) ordered case be dismissed as requested ( ) ordered bail be exonerated ( ) ordered trial dates be vacated
() pre-trial conference set for_____
( ) pre-trial disposition set for _____
( ) trial readiness hearing set for _____

( ) ordered trial dates be confirmed
(✓) *Motion granted to file amended information granted*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

No. 6271

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF

v.

GINO G. RODRIGUEZ [*sic*], DEFENDANT

Date: Oct. 17, 1980

Judge: Hon. Charles W. Jennings
Reporter: ~~William J. Quilty~~/Victoria L. McNutt
Clerk: Verla R. Crawford
Bailiff: Lee Reynolds
District Attorney: Robert R. Maline
by/s/ PETER ILLEGIBLE, Deputy
Counsel for Defendant: Wayne Hardcastle
Deputy Probation Officer: *Roberty Carney*

( ) ARRAIGNMENT ( ) CONTINUED ARRAIGNMENT
( ) PRE-TRIAL DISPOSITION
(x) TRIAL READINESS HEARING
( ) FELONY (In ___ Counts) to wit:
( ) MISDEMEANOR

PEOPLE REPRESENTED AS STATED ABOVE: DEFENDANT PRESENT WITH/~~WITHOUT~~ COUNSEL

( ) Defendant ( ) Counsel handed certified copy of ( ) Information ( ) Indictment ( ) _____

( ) Defendant stated true name as shown ( )_____

( ) Clerk read ( ) Information ( ) Indictment ( ) Order Certifying to Superior Court

( ) Court ( ) advised defendant of legal rights, including right to an attorney ( ) defendant wants attorney but has no money to hire one ( ) defendant waives right to an attorney ( ) waives being further advised of legal rights ( ) Court appoints_____

( ) Court appoints _____

( ) Attorney ( ) present in Court and accepts the appointment ( ) requests a continuance ( ) to study transcript ( ) to make a Motion

( ) Defendant, through counsel moves to set aside Information under Section 995 P.C.

(✓) Declaration of defendant and counsel accepted and filed

(✓) Defendant (✓) withdraws plea of *not guilty* (✓) plead guilty as charged in Count *1 in* ( ) plead guilty of the lesser offense of ____( ) plead not guilty as to Count *Amended Information* ( ) plead not guilty by reason of insanity ( ) pleads nolo contendre ( ) waives time to plead

( ) Defendant: ( ) admits ( ) denies prior convictions of ( ) felony ( ) being armed

( ) District Attorney requested case be dismissed in the interest of justice

( )

( )

COURT:

( ) ordered matter to be continued to _____at 8:15 a.m. _____

( ) fixed bail at $_____ (✓) fixed the degree of the offense at *second* degree

( ) suspended criminal proceedings and certified matter to civil court, and ( ) appointed Drs._____to examine the defendant to determine if he/she is ____ and continued the matter to _____ at 8:15 a.m. _____

( ) certified the defendant back to Criminal Court

( ) suspended proceedings on ground defendant is a minor, defendant certified to Juvenile Court

(✓) defendant waived ~~statutory time for~~ *right to apply for probation*

( ) set case for trial on ___Jury ( ) demanded ( ) waived

( ) referred matter to probation office for report and recommendation and continued matter to _____ for hearing, on said report and for sentencing

( ) ordered defendant ( ) remain at liberty or, the bail previously posted ( ) be released on own recognizance ( ) remain in custody ( ) be released from custody

( ) ordered case be dismissed as requested ( ) ordered bail be exonerated (✓) ordered trial dates be vacated

() pre-trial conference set for_____

( ) pre-trial disposition set for _____

( ) trial readiness hearing set for _____

( ) ordered trial dates be confirmed

(✓) *Order def be sentenced to CYA for medium term to be served concurrent with sentence now serving*

BEST AVAILABLE COPY

ABSTRACT OF JUDGMENT – COMMITMENT

FILED
NOV 24 198
JOAN L. [illegible]
KINGS COUNTY, CA
By [illegible] DEPU

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kings
BRANCH

COURT I.D. 16

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: GINO G. RODRIGUEZ
AKA:

[X] PRESENT [ ] NOT PRESENT

CASE NUMBER(S): 6891 - A; - B; - C; - D; - E

COMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENT [ ] AMENDED ABSTRACT

DATE OF HEARING (mo) (day) (yr)	DEPT. NO.	JUDGE	CLERK
11 23 82	1	Larry G. McKee	Mary Lou Chase

REPORTER	COUNSEL FOR PEOPLE	COUNSEL FOR DEFENDANT	PROBATION NO. OR
William Quilty	Michael Woodbury	Arthur Markham	Tona Sal

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES:

a. [ ] ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT

COUNT	CODE	SECTION NUMBER	CRIME	DATE OF CRIME (mo day yr)	CONVICTION BY COURT	CONVICTION BY JURY	CONVICTION BY PLEA	SENTENCE
1	PC	459	enter to theft	82 10 26 82		X	11	

2. ENHANCEMENTS (CHARGED AND FOUND, STRICKEN, TIME IMPOSED):

COUNT	12022(a)	12022(b)	12022.5(a)	12022.5(b)	12022.6	12022.7(a)	12022.7(b)	12022.7	12022.8
	C/P S I	C/P S I	C/P S I	C/P S I	C/P S I	C/P S I	C/P S I	C/P S I	C/P S I

3. UNCOMPLETED SENTENCES (a) CONSECUTIVE:

COUNT	CASE NUMBER	CREDIT FOR TIME SERVED

4. OTHER ORDERS:

5. a. NUMBER OF PRIOR PRISON TERMS:

0	C/P	0	1
667.5(a)			
667.5(b)			
667.6(b)			

b. NUMBER OF PRIOR FELONY CONVICTIONS:

0	C/P	0	1
667.5(a)			

6. TOTAL TIME IMPOSED ON ALL ATTACHMENT PAGES (FORM DEL 250A):

7. TIME STAYED 1170.1(a) (HYBRID LIMIT) AND/OR 1170.1(f) (DOUBLE BASE LIMIT):

8. TOTAL TERM IMPOSED:

9. EXECUTION OF SENTENCE IMPOSED:

a. [X] AT INITIAL SENTENCING HEARING
b. [ ] AT RESENTENCING PURSUANT TO DECISION ON APPEAL
c. [ ] AFTER REVOCATION OF PROBATION
d. [ ] AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT

10. DATE SENTENCE PRONOUNCED: 11 23 82

CREDIT FOR TIME SPENT IN CUSTODY:	TOTAL DAYS: 141	INCLUDING: ACTUAL DAYS: 94	LOCAL CONDUCT DAYS: 47	GOOD TIME/WORK TIME
				[ ] DAYS

11. DEFENDANT IS DELIVERED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:

[X] FORTHWITH
[ ] AFTER 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS
INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUIDANCE CENTER LOCATED AT:
[ ] CALIF. INSTITUTION FOR WOMEN – FRONTERA
[X] CALIF. MEDICAL FACILITY – VACAVILLE
[ ] OTHER (SPECIFY):

CLERK OF SUPERIOR COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action

DEPUTY'S SIGNATURE NOV 24 1982 Mary Lou Chase

This form is prescribed pursuant to Penal Code §1213.5. To satisfy the requirements of Penal Code §1213 (Abstract of Judgment and Commitment sentences under Penal Code §1170. A copy of probation report shall accompany the Department of Corrections' copy of this form pursuant to Pe A copy of the underlying proceedings and any supplemental probation report shall be transmitted to the Department of Corrections pursu §1203.01. Attachments may be used but must be incorporated by reference.

Form Adopted by the Judicial Council of California
Effective July 1, 1981

ABSTRACT OF JUDGMENT – COMMITMENT
FORM DEL 250

DISTRIBUTION: WHITE COPY – COURT FILE. YELLOW COPY – DEPARTMENT OF CORRECTIONS. PINK COPY – ADMINISTRATIVE OFFICE
CAC 2b

129

odriquez SFR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

No. 6891

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF

v.

RENEE ROSE APODACA, AND GINO G. RODRIGUEZ
[*sic*], DEFENDANTS

[Filed: Sept. 22, 1982]

INFORMATION

The District Attorney of the County of Kings hereby accuses RENEE ROSE APODACA and GINO G. RODRIGUEZ [*sic*] of a felony, in that on or about the 20th day of August, 1982, at and in the Hanford Judicial District, County of Kings, State of California, the said defendants did commit a FELONY, namely: violation of Section 459 of the Penal Code of the State of California, in that the said defendants did willfully, unlawfully and feloniously, enter the inhabited dwelling house of M. W. Wolfe located at [REDACTED] with intent to commit theft.

COUNT II

AS A DIFFERENT STATEMENT OF THE SAME CAUSE OF ACTION SET FORTH IN COUNT I ABOVE, the said defendatns, did in the above Judicial

District, County of Kings, State of California on or about August 20, 1982, commit a(n) FELONY, namely: violation of Section 487(3), of the Penal Code of the State of California, in that the said defendants did willfully, unlawfully and feloniously steal, take and carry away a gun ther [*sic*] personal property of M. W. Wolfe.

Dated this 22nd day of September, 1982.

/*s*/ ROBERT R. MALINE
ROBERT R. MALINE
District Attorney

[SEAL OMITTED]

This document in which this certificate is affixed is a full, True and correct copy of the original on file and of record in my office

[ILLEGIBLE] *5-21-04*

By /*s*/ ILLEGIBLE Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

No. 6891

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF

v.

GINO G. RODRIGUEZ [*sic*], DEFENDANT

Date: Sept. 27, 1982

Judge: Hon. Larry G. McKee
Reporter: Victoria L. McNutt
Clerk: Mary Lou Chase
Bailiff: Mary Umbaugh
District Attorney:
by PETER SCHULTZ Deputy
PETER SCHULTZ
Counsel for Defendant: Arthur Markham
Deputy Probation Officer: /s/ STEVEN BROWN
STEVEN BROWN

( ) ARRAIGNMENT (x) CONTINUED ARRAIGNMENT
( ) PRE-TRIAL DISPOSITION
( ) TRIAL READINESS HEARING
(xx) BAIL REDUCTION MOTION
( )

PEOPLE REPRESENTED AS STATED ABOVE: DEFENDANT PRESENT WITH/~~WITHOUT~~ COUNSEL

( ) Defendant ( ) Counsel handed certified copy of ( ) Information ( ) Indictment ( ) _____

( ) Defendant stated true name as shown ( )_____

( ) Clerk read ( ) Information ( ) Indictment ( ) Order Certifying to Superior Court

( ) Court ( ) advised defendant of legal rights, including right to an attorney ( ) defendant wants attorney but has no money to hire one ( ) defendant waives right to an attorney ( ) waives being further advised of legal rights

( ) Court appoints_____

(✓) Attorney ( ) present in Court and accepts the appointment (✓) requests a continuance ( ) to study transcript ( ) to make a Motion (✓) *995 P.C.*

( ) Defendant, through counsel moves to set aside Information under Section 995 P.C.

( ) Declaration of defendant and counsel accepted and filed

(✓) Defendant ( ) withdraws plea of_____ ( ) plead guilty as charged in Count __( ) plead guilty of the lesser offense of _____(✓) plead not guilty as to Count ___ ( ) plead guilty by reason of insanity ( ) pleads nolo contendre ( ) waives time to plead

( ) Defendant advised of legal rights and waived same regarding change of plea

( ) Defendant: ( ) admits ( ) denies prior convictions of ( ) felony ( ) being armed

( ) District Attorney requested case be dismissed in the interest of justice

(✓) *Waived Illegible*

( )

COURT:

( ) ordered matter be continued to *Oct. 18, 1982* at 8:15 a.m. *995 P.C. RTC*

(✓) ordered bail at *$2,000* ( ) fixed the degree of the offense at _____ degree

( ) suspended criminal proceedings and certified matter to civil court, and ( ) appointed Drs. _____ to examine the defendant to determine if he/she is ____ and continued the matter to _____ at 8:15 a.m. _____

( ) certified the defendant back to Criminal Court

( ) suspended proceedings on ground defendant is a minor defendant certified to Juvenile Court

( ) defendant waived statutory time for_____

(✓) set case for trial on *Nov. 8, 1982* Jury ( ) demanded ( ) waived

( ) referred matter to probation officer for report and recommendation and continued matter to _____ for hearing on said report and for sentencing

( ) ordered defendant ( ) remain at liberty on the bail previously posted ( ) be released on own recognizance ( ) remain in custody ( ) be released from custody

( ) ordered case be dismissed as requested ( ) ordered bail be exonerated ( ) ordered trial dates be vacated

() pre-trial conference set for_____

(✓) pre-trial disposition set for *Oct. 18, 1982*

(✓) trial readiness hearing set for *Oct. 25, 1982*

( ) ordered trial dates be confirmed

(✓) *Pet. A due 10-5-82, D.A. response due 10-15-82*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

No. 6891

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF

v.

GINO RODRIQUEZ, DEFENDANT

[Filed: Oct. 25, 1982]

DECLARATIONS AND ORDER REGARDING PLEA OF GUILTY/~~NOLO CONTENDERE~~/OR CHANGE OF PLEA

DECLARATION BY DEFENDANT

(To be completed by defendant with the help of his lawyer, if any)

I say that: (Type or print the following information)

(✓) 1. My true name is *Gino Rodriquez*

(✓) 2. I am/~~am not~~ represented by a lawyer.

My lawyer's name is *Arthur T. Markham*

(✓) 3. I have received a copy of the Information/~~Indictment~~ against me. I understand all the crimes charged against me, and I ~~do~~/do not

wish to have the Information/ ~~Indictment~~ further explained to me.

(✓) 4. I understand the maximum and minimum punishments I could receive for each crime are:

Count	Crime	Maximum and Minimum Punishment
1	*459*	*Max 3 years State Prison &*
Probation cannot be		*up to 10,000 fine, or 5 yrs.*
unless unusual cir-		*Felony Probation with up to*
cumstances.		*1 year county jail*
2	*487(3)*	" " "

(✓) 5. I understand that as to each crime charged against me, I have the right to say:

(a) I am not guilty.
(b) I am not guilty because of insanity.
(c) I don't wish to defend against the charge.
(d) I am guilty.

(✓) 6. I understand that I have the following constitutional rights:

(a) The right to a speedy and public trial.
(b) The right to be tried by a jury.
(c) The right to see, hear and question all the witnesses against me, including the person who makes the accusation against me.
(d) The right at the trial to present evidence in my favor and either to testify for myself, or if I wish, I may remain silent, and I understand that no one can compel me to testify against myself.

(e) The right to have the judge compel the attendance of witnesses or production of evidence related to my crime.

(f) The right to have a qualified lawyer defend me before, during and after the trial.

(✓) 7. I understand that if I say I (am guilty of) (~~don't wish to defend against~~) a crime charged against me, I will give up all of the above constitutional rights as to that crime.

(✓) 8. I understand that if I say (am guilty of) (~~don't wish to defend against~~) a crime charged against me, the judge could give me the same punishment as if I told him I am not guilty and were convicted by a jury. I understand the Judge may decide not to give me probation.

(✓) 9. I understand that if I tell the judge I (am guilty of) (~~don't wish to defend against~~) a crime charged against me, the judge will not set my sentence until after he reads and consider my past criminal record, if any, and any report and recommendation of the Probation Department.

(✓) 10. No one has told me, or promised or suggested to me, that I will receive a lighter sentence, or probation, or any other favors, to get me to say I (am guilty) (~~don't wish to defend against the charge(s)~~), nor has anyone, threatened or promised to reward me, my family or anyone else, to get me to say I (am guilty of) (~~don't wish to defend against~~) the crime(s) charged against me, save and except as follows: *If I plead guilty to 459 2d degree residential the charges in*

Handford [ILLEGIBLE] CR 22308 will be dismissed and Count 2 in the information will also be dismissed. There is no promise as to what sentence I will receive.

(✓) 11. *Arthur T. Markham* has fully explained to me:

(✓) (a) The information/~~indictment~~ against me, including the nature of each crime charged.

(✓) (b) The maximum and minimum punishments that I could receive for each crime charged, including the fact(s) that:

(✓) The court will not decide my sentence until after it considers my past criminal record, if any, and the Probation Department's report and recommendations.

(✓) The court may impose the maximum penalty permitted by law regardless of my guilty plea.

( ) M.D.S.O. proceedings must be instituted.

(✓) I may be committed to the Youth Authority.

( ) I may be committed to the Department of Corrections, Narcotics Rehabilitation Program.

( ) I am ineligible for probation.

( ) I can receive only a state prison sentence.

(✓) (c) My constitutional rights as set forth in this Declaration and the consequences of a guilty plea.

(✓) (d) This Declaration and its entire contents.

( ) (e) The legal effect of a plea of nolo contendere shall be the same as that of a plea of guilty, but the plea may not be used against me as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

(✓) 12. I understand that I have previously pleaded not guilty/~~not guilty by reason of insanity~~ to the crime(s) charged against me. I hereby declare that I desire to withdraw my plea(s) of not guilty/~~not guilty by reason of insanity~~ and enter a plea(s) of guilty/~~nolo contendere~~ (~~don't wish to defend against the charge(s)~~) (to Count *1*).

( ) 13. I freely and voluntarily say I (am guilty of) (don't wish to defend against) the following crimes charged against me:

Count	Crime
1	*459 2nd Degree Residential*

(✓) 14. *Arthur Markham* explained this form and its entire contents to me. I fully understand what I have stated in this Declaration and the consequences thereof, and I waive any right that I

may have to being further instructed thereon by the Court.

I declare under penalty of perjury that the above is true and correct.

Signed on *Oct 25*, 1982, at *Hanford*, California.
(Date) (Place)

/s/ GINO RODRIQUEZ
GINO RODRIQUEZ
(Signature of Defendant)

GINO RODRIQUEZ
(Type or Print Name of Defendant)

DECLARATION BY DEFENDANT'S ATTORNEY

(1) On *Oct 25*, 1982, at *Hanford*, California,
(Date) (Place)

I fully explained to the defendant:

(✓) (a) The Information/~~Indictment~~ against him, including the nature of each crime charged.

(✓) (b) The maximum and minimum punishments that the defendant could receive for each crime charged, including the fact(s) that:

(✓) The court will not decide the defendant's sentence until after it considers his past criminal record, if any, and the Probation

Department's report and recommendation.

(✓) The court may impose the maximum penalty permitted by law regardless of the defendant's guilty plea.

( ) M.D.S.O. proceedings must be instituted.

(✓) Defendant may be committed to the Youth Authority.

( ) Defendant may be committed to the Department of Corrections, Narcotics Rehabilitation Program.

( ) Defendant is ineligible for probation.

( ) Defendant can receive only a state prison sentence.

(✓) (c) The defendant's constitutional rights as set forth in his Declaration and the consequences of a guilty plea.

(✓) (d) The above Declaration by defendant and its contents.

(✓) (e) The meaning and legal effect of a plea of nolo contendere.

( ) 2. To the best of my knowledge and belief, defendant understands the matters set forth in his Declaration and each of his statements therein is accurate and true and is voluntarily and understandingly made.

( ) 3. The defendant's plea(s) of (guilty) (~~nolo contendere~~) is/~~are~~ accordance with the facts as related to me by the defendant.

( ) 4. I recommend to the court that:

(✓) The court accept the defendant's waiver of his constitutional rights as stated herein above.

(✓) The court accept the defendant's request to withdraw his prior plea(s) of not guilty/~~not guilty be reason of insanity~~ to Count (*1*).

(✓) The court accept the defendant's plea(s) of (guilty) (~~nolo contendere~~), (to Count *1* ").

I declare under penalty of perjury that the foregoing is true and correct.

Signed in the presence of the defendant on *Oct 25*, 19*82*, at *Hanford*, California.
(Date) (Place)

/s/ ARTHUR T. MARKHAM
ARTHUR T. MARKHAM
(Attorney for Defendant)

ARTHUR T. MARKHAM
(Type or Print Name of Attorney)

208 N. Douty Rm 212 Handford
(Type or Print Address)

ORDER OF ACCEPTING PLEA

Having ascertained in open court that: (1) The defendant fully understands his constitutional rights, the nature of the crime(s) charged in the Information/ ~~Indictment~~ and the consequences of his (guilty) (~~nolo~~

~~contendere~~) plea(s) and (2) The defendant understandingly and voluntarily withdraws his former plea(s) of not guilty/~~not guilty by reasons of insanity~~, and pleads (guilty) (~~nolo contendere~~) and waives his constitutional rights.

IT IS ORDERED that the defendant's request to withdraw his former plea(s) of not guilty/~~not guilty by reason of insanity~~ be granted and that defendant's plea(s) of (guilty) (~~nolo contendere~~) and waiver be accepted and entered in the minutes of this court.

Dated: _____

/s/ LARRY G. MCKEE
LARRY G. MCKEE
Judge of the Superior Court

[SEAL OMITTED] This document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in my office.

Date: *5-21-04*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

No. 6891

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF

v.

GINO G. RODRIGUEZ [*sic*], DEFENDANT

Date: Oct. 26, 1982

Judge Hon.: Larry G. McKee
Reporter: Julie Westbay
Clerk: Mary Lou Chase
Bailiff: Mary Umbaugh
District Attorney: by Michael Woodbury Deputy
Counsel for Defendant: Arthur Markham
Deputy Probation Officer: *Glenda Fuji*

( ) ARRAIGNMENT ( ) CONTINUED ARRAIGNMENT
( ) PRE-TRIAL DISPOSITION
(x) TRIAL READINESS HEARING
( ) FELONY (In ___ Counts) to wit:
( ) MOTION TO FILE AMENDED INFORMATION and
( ) MISDEMEANOR

PEOPLE REPRESENTED AS STATED ABOVE: DEFENDANT PRESENT WITH/~~WITHOUT~~ COUNSEL

( ) Defendant ( ) Counsel handed certified copy of ( ) Information ( ) Indictment ( ) _____

( ) Defendant stated true name as shown ( )_____

( ) Clerk read ( ) Information ( ) Indictment ( ) Order Certifying to Superior Court

( ) Court ( ) advised defendant of legal rights, including right to an attorney ( ) defendant wants attorney but has no money to hire one ( ) defendant waives right to an attorney ( ) waives being further advised of legal rights ( ) Court appoints_____

( ) Court appoints _____

( ) Attorney ( ) present in Court and accepts the appointment ( ) requests a continuance ( ) to study transcript ( ) to make a Motion ( ) ___

( ) Defendant, through counsel moves to set aside Information under Section 995 P.C.

(✓) Declaration of defendant and counsel accepted and filed

(✓) Defendant (✓) withdraws plea of *not guilty* (✓) plead guilty as charged in Count *1-459 P.C.* ( ) plead guilty of the lesser offense of ____( ) plead not guilty as to Count ___ ( ) plead not guilty by reason of insanity ( ) pleads nolo contendre ( ) waives time to plead

(✓) Defendant advised of legal rights and waived same regarding change of plea

( ) Defendant ( ) admits ( ) denies prior convictions of ( ) felony ( ) being armed

( ) District Attorney requested case be dismissed in the interest of justice
(✓) *D.A. to dismiss HSC & other charges*
( )

COURT:
(✓) ordered matter to be continued to *Nov. 23, 1982* at 8:15 a.m. *P/S*
( ) fixed bail at $____ ( ) fixed the degree of the offense at _____degree
( ) suspended criminal proceedings and certified matter to civil court, and ( ) appointed Drs._____to examine the defendant to determine if he/she is ____ and continued the matter to _____ at 8:15 a.m. _____
( ) certified the defendant back to Criminal Court
( ) suspended proceedings on ground defendant is a minor, defendant certified to Juvenile Court
( ) defendant waived statutory time for_____
( ) set case for trial on __ Jury ( ) demanded ( ) waived
( ) referred matter for probation office for report and recommendation and continued matter to _____ for hearing on said report and for sentencing
( ) ordered defendant ( ) remain at liberty on the bail previously posted ( ) be released on own recognizance ( ) remain in custody ( ) be released from custody
( ) ordered case be dismissed as requested ( ) ordered bail be exonerated ( ) ordered trial dates be vacated
() pre-trial conference set for_____
( ) pre-trial disposition set for _____
( ) trial readiness hearing set for _____

( ) ordered trial dates be confirmed
(✓) *bail revoked, set bail at $10,000.00*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

No. 6891

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF

v.

GINO G. RODRIGUEZ [*sic*], DEFENDANT

Date: Nov. 23, 1982

Judge: Hon. Larry G. McKee
Reporter: *William Quilty*
Clerk: Mary Lou Chase
Bailiff: Mary Umbaugh
District Attorney: by *Michael Woodbury* Deputy
Counsel for Defendant: Arthur Markham
Deputy Probation Officer: *Tana Sales*

(xx) HEARING ON REPORT OF PROBATION OFFICER AND PRONOUNCEMENT OF SENTENCE
( ) REVOCATION OF PROBATION
( ) VIOLATION OF PROBATION
( ) CHANGE OF PLEA UNDER SECTION 1203.4 P.C.

PEOPLE REPRESENTED AS STATED ABOVE: DEFENDANT PRESENT WITH/~~WITHOU~~T COUNSEL

(✓) Report of Probation Officer on file
(✓) Court has read and studied the report and makes it a part of the record
(✓) Attorney spoke on behalf of the defendant
(✓) District Attorney ( ) concurs ( ) objects to the recommendation of the Probation Officer (✓) recommends *aggravated term*
( ) Defendant advised of constitutional rights and waived same
(✓) Defendant stated no legal cause why judgment should not be pronounced
( ) Defendant ( ) arraigned for sentencing ( ) waived arraignment for sentence
( ) District Attorney ( ) Probation Officer stated defendant has violated terms of probation ( ) defendant admitted violation of probation
( ) Probation Officer reports defendant has successfully completed probation

COURT ORDERED:
( ) proceedings be suspended without imposition of sentence ( ) imposition/execution of sentence be suspended
(✓) probation to be ( ) granted (✓) denied ( ) revoked ( ) modified ( ) reinstated for _____
( ) defendant ( ) serve _____ in County Jail with credit for time served in the amount of _____ days ( ) pay fine in the amount of $ _____
( ) defendant be sentenced to State Prison for term prescribed by law *24 mos*
(✓) defendant be sentenced to State Prison for ( ) lower (✓) middle ( ) upper term of years/months for violation of *459 P.C.* plus _____ years/months for violation of _____

( ) sentence to run ( ) concurrent with _____
( ) consecutive with _____
( ) defendant to certified to CYA for possible acceptance. Sheriff to deliver said defendant to such reception reception facility as the CYA may designate, if so accepted
( ) defendant accepted terms of probation
( ) defendant ( ) remanded to ( ) released from custody of Sheriff
( ) Sheriff directed to deliver defendant into custody to the Director of Corrections at Chino
( ) defendant advised of right to appeal said judgment
( ) defendant's plea of guilty be withdrawn and plea of not guilty be entered under Section 1203.4 P.C.
(✓) *Count 2 dismissed per motion of D.A.*
(✓) *D.A. to dismiss HJC charges*
( )
( )

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CR-03-142-RHW
Vio: 18 U.S.C. § 922(g)(1) Felon in Possession of a Firearm

UNITED STATES OF AMERICA, PLAINTIFF

v.

GINO G. RODRIQUEZ, DEFENDANT

[Filed: July 15, 2003]

INDICTMENT

The Grand Jury Charges:

On or about April 1, 2003, in the Eastern District of Washington, GINO G. RODRIQUEZ, having been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess in and affecting commerce a firearm, to wit: a *KAHR PUC* Model K40, .40 caliber handgun, serial number DA 0733, which firearm had theretofore been transported in interstate commerce; all in violation of 18 U.S.C. §§ 922(g) and 924(e).

DATED this *15th* day of July, 2003.

A TRUE BILL

/s/ [ILLEGIBLE]
Foreperson

/s/ [ILLEGIBLE]
JAMES A. MCDEVITT
United States Attorney

[ILLEGIBLE]
/s/ JOSEPH H. HARRINGTON
Assistant United States
Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

No. 03-CR-142-RHW
Spokane Washington Appeal Transcript

UNITED STATES OF AMERICA, PLAINTIFF

v.

GINO G. RODRIGUEZ [*sic*], DEFENDANT

May 27, 2004
Proceedings

Volume 6

BEFORE THE HONORABLE ROBERT H. WHALEY UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: JOSEPH H. HARRINGTON
Assistant United States Attorney
P.O. Box 1494
Spokane, WA 99210

ALSO PRESENT: DET. MICHAEL D. RICKETTS
Spokane County Sheriff's Office

FOR THE DEFENDANT: KIMBERLY A. DEATER
Federal Defenders of Eastern
Washington and Idaho
10 North Post, Suite 700
Spokane, WA 99201

Proceedings reported by mechanical stenography; transcript produced by computer-aided transcription.

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[464]

(May 27, 2004; 11:30 p.m.)

THE COURTROOM DEPUTY: We have *United States of America v. Gino Rodriguez* [*sic*], Case No. CR-03-142. Time set for sentencing hearing.

MR. HARRINGTON: Good morning, Your Honor. May it please the Court: By way of background, Mr. Rodriguez [*sic*] was convicted by a jury of being a felon in possession of a firearm. There has been a pre-sentencing investigation report that is dated May 21st, 2004, which report has been compiled by Ms. Gloria Petretee of the U.S. Probation Office.

There appears to be two large issues before the Court. The first large issue is the applicability of the armed career criminal statute, and the second large issue is whether any of the defendant's prior convictions are deemed related cases.

Your Honor, first, with respect to the applicability of the armed career criminal statute, as the Court knows, it's necessary that there be three prior predicate felony offenses that are either crimes of violence, such as burglary, or drug trafficking crimes, which carry a penalty of ten years or greater. The question is whether the defendant's 1995 drug-related convictions in the Spokane County Superior Court are predicate convictions that fall within the definition of the armed career criminal statute.

The parties have briefed that issue. I would note, however, Your Honor—and I—understanding the significance [465] and importance of resolving this issue correctly, the defendant did file a motion a couple of days ago, May 25th of 2004, in response to the govern-

ment's position, but also raising some new issues. One is whether the due process notice requirement is effective in this case; second, whether the rule of lenity applies; and, third, it appears that this is the first time there's been a direct objection to including or counting the 1982 California burglary conviction.

In addition, Your Honor, the government has filed a motion to continue this sentencing. I would note, Your Honor, the government has certified copies of the defendant's convictions. But in light of the objection raised with respect to the 1982 burglary conviction out of California, the government is requesting additional time to obtain the commitment orders from California Department of Justice, which will have the defendant's fingerprints; and the government will—intends to then compare or have a forensic fingerprint expert compare those fingerprints with his known fingerprints here—that were taken here in connection with the instant matter. And that will, I would proffer to the Court, conclusively prove that the defendant is the one that was convicted or burglary in California.

I would also note, Your Honor, a request—I think it's important for the Court to know that the government did request those fingerprints the first part of May, and they have not [466] been received because, first, of the age of the convictions, and also the Department of Justice is working as best they can. This morning I talked to Dennis Cross (phonetic) in Sacramento, who works for the Department of Justice in California. He said that he would make this a priority on this schedule and asked me to follow up with the faxed memorandum, which I will do today.

With respect to the second, larger issue with respect to the related cases, the government's provided briefing with respect to the government's position.

THE COURT: Related cases doesn't become an issue if he's an armed career criminal.

MR. HARRINGTON: That's correct, Your Honor. I think the arguments have been in the alternative. If the armed career criminal statute doesn't apply, then the question about the defendant's—not only his criminal history but also his base offense level with respect to prior felony convictions would come into play.

THE COURT: And unless you can get two armed career criminal convictions out of the sentences that were done on the same day in Spokane County, then he would not be an armed career criminal. If they give you the one out of California, you still need to get two out of this three-case sentencing.

MR. HARRINGTON: There's a question about whether the defendant has a second residential burglary conviction in California. I have a copy of a judgment and commitment order [467] dated December—or—dated 1980 which would seem to indicate the defendant has a second residential burglary conviction in California. And assuming that's accurate, he would have two prior violent crime convictions out of California. And then the government would need to prove at least one of the convictions here in Spokane County was a ten-year—held a ten-year or larger or greater penalty.

THE COURT: But the conviction you have is not part of the pre-sentence report?

MR. HARRINGTON: That's correct, Your Honor. And—

THE COURT: But is it certified?

MR. HARRINGTON: It is certified. The question then becomes: Is that—is that Mr. Rodriguez [*sic*]? And that's why I've asked for a continuance.

THE COURT: All right. Well, let me hear from Ms. Deater.

MR. HARRINGTON: Thank you, Your Honor.

THE COURT: With respect to the authenticity of the criminal history, what are you objecting to?

MS. DEATER: Well, as far as the authenticity, if they are going to use any one of those to enhance the sentence, I believe under *Taylor v. The United States*, they're going to have to prove the conviction and the facts of the conviction—that the facts of the conviction support that the conviction qualifies as an act or predicate offense as either a serious or [468] violent offense.

THE COURT: Let me ask it a different way. Maybe you answered me, but I'm just trying to understand you.

MS. DEATER: All right.

THE COURT: The impression I got from what Mr. Harrington was saying was that the burglary conviction that is included in the pre-sentence report—that you're contending that it wasn't your client?

MS. DEATER: I'm contending that—I'm not contending that it wasn't my client. I'm contending that they have the burden of proof to show by clear and convincing evidence.

THE COURT: All right. Then it seems to me that takes care of what Mr. Harrington is saying his

need for a continuance is because the fingerprints won't tell us that.

MS. DEATER: And besides that—

THE COURT: Well, let me address that.

MS. DEATER: Okay.

THE COURT: It seems to me, Mr. Harrington, she's agreeing that's her client. It's just a matter of the legal significance of whatever proof you have.

MS. DEATER: From the 1982? We're not admitting and we're not denying that conviction, Your Honor. We would leave it to the government to prove it.

THE COURT: Well, if you're not—

[469]

MS. DEATER: I understand what the Court is saying. It would alleviate the necessity of having somebody come to testify regarding the fingerprints if we admit that, yes, that was Mr. Rodriguez [*sic*] that was named in that charge.

THE COURT: But you're not admitting that.

MS. DEATER: No.

THE COURT: All right. Then I'm going to continue this.

MS. DEATER: Your Honor, if I may?

THE COURT: Yes.

MS. DEATER: I don't know that that even becomes an issue unless the Court finds that the three 1995 Spokane County convictions—that any one of them qualify for ACCA purposes. Also, the 19—

THE COURT: You're right. But I am muddled enough on that issue that if I had more time to think about it, I'd do a better job. I send out an order yesterday to you people about this, and that's why I was late coming out. I was still trying to deal with this issue with my law clerk. And I want to continue it because I want to be better educated, in my mind, about the law with respect to these three offenses. It seems to me one approach you can take is that it's a categorical approach. Each of those offenses for the offense carries five years. And so if that's true, if you take that approach, none of them are predicate offenses.

[470]

A second is that no—the charging documents all carry ten years. And so—I mean, the judgments. And so that would tell you that the ten years were applicable and all three of them would apply. Or you could take the position that they were done seriatim. One of them originally was—the first one was a five year; but once you had that conviction, the next two would be ten years. Or you can conclude that there's no way to tell that from the record, and so they may have been all at one time. I just—I'm confused enough about it that I just need to think more conceptually about what it means.

MS. DEATER: Well, then we could just apply the rule of lenity, Your Honor, and—

THE COURT: Well, we may. We may. I don't know. But I don't want to just take a muddled record and say, well, I'm going to look at it this way and have the Circuit sort it out. I want to do a—I mean, I could rule today and I wouldn't—but I would feel like I hadn't given Mr. Rodriguez [*sic*] or the government as much—some of your late filings prompt me to be troubled about

what I'm doing. And I think it's fairer to you, frankly, and fairer to the government for me to continue it. I'm not so concerned about the government not—I mean, if the only issue was the government hadn't gotten their stuff here in time, it's a big government and I don't mind holding them to do that. But there are issues in addition to that that I want more time on.

[471]

MS. DEATER: Yes, Your Honor.

THE COURT: From your perspective, Mr. Harrington, for the reasons that you want more time, how much time do you need?

MR. HARRINGTON: Your Honor, I would respectfully submit a minium of two weeks.

THE COURT: All right. Do we have something out there, Ms. Fox?

THE COURTROOM DEPUTY: The first time we could do would be July 1st at 1:00.

THE COURT: That's the best I can do.

MR. HARRINGTON: All right. Thank you.

THE COURT: Is that all right with you, Ms. Deater?

MS. DEATER: Yes, Your Honor. Thank you.

THE COURT: If that date doesn't fit with your calendar, let us know. But that's the first I can do it. June is kind of bad for me. All right. I'm going to continue it till then.

I'm going to forget what I've said here, but I don't want you people to forget it because I want you to bring it back to me. But it seems to me that we have the is-

sues of whether the California burglary is going to meet—first, if you can prove that it's Mr. Rodriguez [*sic*], whether or not it would qualify as a crime of violence; and then if you have a record of some other offense, whether that would qualify as a crime of violence. [472] And so I would like some further filing from you that addresses those things; and then secondly, whether, out of the three convictions in Spokane County, any of them would apply. And I may be missing your arguments when I summarize it, so I want you to educate me if I am. But the way I look at it is Washington has a statute which carries a five-year penalty for these type drug offenses, but it has an enhancing statute that permits you to double it. And so there are two questions. One, would you look at the enhancing statute to determine the ten years, or would you just look at the underlying offense? Is it offense driven as opposed to the sentencing enhancement? And I sort of try to make analogies in my mind. Let's assume that Washington had a statute that said a serious drug offense carries five years; but if you do it with a minor, then an enhancement to the sentence is another ten years. But the offense is the same. It's a sentencing issue. Or if they said if you had a firearm in connection with it, we add another ten years. Would you use the five years, or would you use the sentence? And I don't know that because in looking at Washington, there's a case—I think it's *Kelley*—that says that it's an enhancement, not a—so under that scenario, they're all five-year offenses. And the question then becomes: Do you go beyond that to the enhancement? And then separate from that is the issue of is the record sufficient to establish that at the plea that factually, they were done one after the [473] other, so that you could say the first one was five years,

the seconds one was ten, the third was ten, or that you can't tell or that that's not relevant? I mean, if they're all done as part of one sentencing, where they were five-year offenses, that—I mean, I don't know if you're just supposed to sort of intellectually say these offenses occurred on three different dates, the pleas were taken at the same time, but there had to have been one plea that preceded the other pleas, and so when that plea was over, you were suddenly enhanced to ten years, or whether—I don't know. So I'm fuzzy enough about it that I'm admitting it to you and asking you to help me at the next sentencing.

Does anybody have any questions? I'd rather answer them now because I'm going to take this thing off my plate.

MS. DEATER: Your Honor—

THE COURT: Have I raised anything that you want some guidance on?

MS. DEATER: You know, I don't know how—I have an idea. I've already researched the issues that you're discussing in light of the fax I received from the Court and that the government received as well yesterday afternoon. And what I looked at—and I don't know. I'm just rediscussing the issue with you. What I looked at, my understanding was that the term that required the analysis or the focus was the term conviction in 924(e) as well as the doubling statute in [474] Washington state.

THE COURT: All right. Well, give it your best shot, and I'll see you on the 1st of July.

Court's in recess.

(The proceedings recessed at 12:00 noon.)

[475]

CERTIFICATE

I, DEBRA KINNEY CLARK, do hereby certify:

That I am an Official Court Reporter for the United States District Court at the Eastern District of Washington;

That the foregoing proceedings were taken on the date and at the time and place as shown on page i here to; and

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings.

DATED this *23rd* day of *November*, 2004.

/s/ DEBRA KINNEY CLARK
DEBRA KINNEY CLARK
Official Court Reporter
United States District Court
Eastern District of Washington

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

No. 03-CR-142-RHW
Spokane Washington Appeal Transcript

UNITED STATES OF AMERICA, PLAINTIFF

v.

GINO G. RODRIGUEZ [*sic*], DEFENDANT

Sept. 2, 2004
Proceedings

Volume 7

BEFORE THE HONORABLE ROBERT H. WHALEY UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: JOSEPH H. HARRINGTON
Assistant United States Attorney
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ALSO PRESENT: DET. MICHAEL D. RICKETTS
Spokane County Sheriff's Office

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Proceedings reported by mechanical stenography; transcript produced by computer-aided transcription.

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(September 2, 2004; 11:30 a.m.)

THE COURTROOM DEPUTY: We have *United States of America v. Gino Rodriguez* [*sic*], Case No. CR-03-142. Time set for sentencing hearing.

THE COURT: Let me put in the record—do you have something you need to put in the record, Mr. Harrington, before I start? You're here and Mr. Rodriguez [*sic*] is here and Ms. Deater is here. Is that all you need?

MR. HARRINGTON: I am prepared to put on some testimony, but nothing to introduce the case.

THE COURT: Testimony?

MR. HARRINGTON: Yes. To authenticate the judgment and commitment orders, I was going to put on some testimony from Special Agent Michael Ricketts, who took the original fingerprint card. And then the ident officer, Mr. Coppock.

THE COURT: Okay. You go ahead, then.

MR. HARRINGTON: Shall I?

THE COURT: You go ahead now. Yeah.

MR. HARRINGTON: Okay. Your Honor, the government would call Detective Michael Ricketts.

(WITNESS, MICHAEL RICKETTS, called as a witness on behalf of the plaintiff, having first been duly sworn, testified as follows:)

THE COURTROOM DEPUTY: If you'll have a seat. And if you'll state your name; and spell you first and your last [477] name, please, for the record.

THE WITNESS: Michael Ricketts, R - i - c - k - e - t - t - s.

DIRECT EXAMINATION

BY MR. HARRINGTON:

Q. And, for the record, how are you employed?

A. With the Spokane County Sheriff's Office. I'm a detective, and I'm currently assigned to a task force with the Bureau of Alcohol, Tobacco & Firearms.

Q. And were you involved in the investigation involving the defendant, Mr. Rodriguez [*sic*]?

A. Yes, I was.

Q. In connection with your involvement, did you have an opportunity to be present when his fingerprints were taken?

A. Yes.

Q. I'm going to hand you what's been previously marked as government Exhibit No. 1 and ask if you can identify this.

(Materials were handed to the witness.)

A. This is the fingerprint card that was—when Mr. Rodriguez [*sic*] was processed at U.S. Marshal's Service. I was present when he was processed, and then the fingerprints were applied to the card.

Q. And do you know approximately when that date was?

A. It was July 8th, 2003.

Q. And is your name listed on that card?

A. Yes, it is.

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Q. And is that the original card containing Mr. Rodriguez's [*sic*] fingerprints?

A. One of the originals. I make two originals. And I send one to the FBI, and then I keep one for the case file for comparison purposes.

Q. And when we refer to Mr. Rodriguez [*sic*], are we referring to the defendant?

A. Yes, we are.

MR. HARRINGTON: The government would move for the admission of Exhibit 1, which is the original fingerprint card.

MS. DEATER: I have no objection.

THE COURT: Exhibit 1 is admitted without objection.

MR. HARRINGTON: I have no further questions of this witness, Your Honor.

THE COURT: All right. You may step down. Any more evidence?

MR. HARRINGTON: Yes, Your Honor. The government would move for the admission of what has been previously marked as government's Exhibits No. 2, 3, 4, 5, 6, 7, and 8, all of which are the certified copies of judgment and commitment orders, certified and authenticated, as well as Exhibit No. 3 is a fingerprint

card containing the defendant's fingerprints from his convictions in California.

THE COURT: Any objection?

MS. DEATER: No, Your Honor.

[479]

THE COURT: They're admitted without objection.

MR. HARRINGTON: Your Honor, the United States would call Mr. Craig Coppock.

THE COURT: Let me ask you this. Is this—I didn't get the impression that any of the convictions that were in the pre-sentence report were being contested.

MR. HARRINGTON: My understanding, Your Honor, is that the defense wanted to have proof of this on the record.

MS. DEATER: Your Honor, we addressed this last time; and the Court asked us if we were admitting to the convictions. There isn't a question as to the Spokane County convictions. As far as the two convictions from California, the burglary convictions, we said we weren't stipulating to anything. We weren't denying anything either. So I believe—

THE COURT: All right. Go ahead.

MR. HARRINGTON: All right. Thank you, Your Honor.

THE COURT: I'm just trying to figure out what we're arguing about.

MR. HARRINGTON: I understand.

THE COURTROOM DEPUTY: Sir, would you raise you right hand, please?

(WITNESS, CRAIG COPPOCK, called as a witness on behalf of the plaintiff, having first been duly sworn, testified as follows:)

THE COURTROOM DEPUTY: Okay. If you'll have a seat. And if you'll state your name; and spell your first and your [480] last name, please, for the record.

THE WITNESS: Craig Coppock, C - r - a - i - g C - o - p - p - o - c - k.

DIRECT EXAMINATION

BY MR. HARRINGTON:

Q. Would you, for the record, tell the Court how you're employed?

A. I'm a forensic specialist with the Spokane County/City Forensic Unit.

Q. And briefly, what are your duties and responsibilities?

A. My duties could be broken down into three major components: crime scene investigation, fingerprint identification, photographic documentation.

Q. And how long have you been doing those responsibilities?

A. Since 1988, and since 1992 with Spokane.

Q. And have you ever been admitted—or—provided expert testimony with respect to fingerprints?

A. Yes.

Q. How many times? Can you estimate?

A. I cannot estimate. Numerous times.

Q. All right. I want to hand you what have been previously marked as Exhibits No.—first, Exhibit No. 1, 2, 3, 4, 5, 6, 7, and 8. And Exhibit No. 1 I think is attached to Exhibit No. 2. It's a fingerprint card.

(Materials were handed to the witness.)

A. Yes.

[481]

Q. (By Mr. Harrington) Do you recognize those items?

A. I do.

Q. And just generally, what are they?

A. Well, Item No. 1 is a fingerprint card that I used in comparison against other documents.

Q. All right. And how about Exhibits No. 2 through 8?

A. Fingerprint No. 2 is my report.

Q. That's Exhibit No. 2?

A. Yes.

Q. Okay.

A. And actually, there's two reports here, one dated June 2nd, the other with a final date of 1- 23 of '04. And 3 through 8 are just various court documents.

Q. And Exhibit No. 3, does that contain fingerprints from California convictions?

A. Yes. It appears so. From Sacramento.

Q. Okay. And then Exhibit No. 4?

A. Exhibit No. 4 is also some court documents.

Q. And for interests of time, is that a California case, number 6271?

A. State of California. That's correct. 6271.

Q. And Exhibit No. 5? Those—

A. Again, another California document.

Q. Do you have that document in front of you?

A. No. 5?

[482]

Q. Yes.

A. No. 5? Yes.

Q. And is that under California case 6591?

A. Yes, it is.

Q. And Exhibit No. 6—do you have that document in front of you?

A. Yes.

Q. And what's that?

A. This is a judgment and sentence document from Spokane.

Q. And is that in Case No. 95-1-01071-8?

A. I don't see that. There's numerous numbers on here.

Q. Let me just direct your attention to the caption of the document—of the documents. And on the right-hand portion of the document, is there something that says No., or N - o?

A. Yes. This is 95-1-01070-0.

Q. Okay. And does that document or exhibit contain fingerprints at page 9 of 9?

A. Yes, it does.

Q. And—

A. And I see my initials there as well.

Q. Okay. And with respect to the next exhibit?

A. No. 7?

Q. Yes.

A. County of Spokane document, judgment and sentence, No. 95-1-01071-8.

[483]

Q. And does that document also contain fingerprints at page 9 of 9?

A. Page 9 of 9? Yes. It also has fingerprints, with my initials.

Q. And with respect to Exhibit No. 8, is that also documents from Spokane Superior Court?

A. Yes.

Q. Case No. 95-1-01089-1?

A. Correct.

Q. And does that—do those documents also contain fingerprints as well?

A. Yes. Page 9 of 9. And again, my initials are present.

Q. Now, I want to ask: In connection with this case, were you asked to do some comparison of fingerprints between these court documents that we referred to and Mr. Rodriguez's [*sic*] original fingerprint card, Exhibit No. 1?

A. I was. There was one document in here I didn't note the fingerprint right away. If I could thumb back through them real quick.

(Pause in proceedings.)

A. That would be Exhibit No. 5. I don't see the fingerprint card present in here.

Q. (By Mr. Harrington) Okay. And that would be in case number—California case number—

A. 6891.

[484]

Q. Okay. All right. Other than—with that acknowledgment, did you do some comparison of fingerprints in this case?

A. I did.

Q. And what is it that you compared?

A. I compared four separate judgment and sentences from Spokane County and six fingerprint cards of various dates against a local ten-print card generated from the Federal Building here.

Q. And were those—the fingerprints you compared the original ten-print card to, were those fingerprints from the California cases as well as the Spokane County cases?

A. Correct.

Q. And after comparing those fingerprints, did you reach any conclusion?

A. I did.

Q. And what was your conclusion?

A. Of the six ten-print cards or copies of ten-print cards from the documents and the four judgment and sentence documents against the common card of Gino Rodriguez [*sic*], in my expert opinion, I—my conclusion was that they all originated from one and the same person.

Q. Okay. And that would include the two California cases as well as the Spokane County cases; is that correct?

A. I believe so.

MR. HARRINGTON: I have no further questions, Your [485] Honor.

THE COURT: Can you tell me which California cases they are? You might look at the pre-sentence report by paragraph. It would make more sense.

MR. HARRINGTON: I'm sorry, Your Honor?

THE COURT: You might look at the pre-sentence report that lists the California convictions and just see which ones they are by paragraph that he's identified. I don't know which one Exhibit 5 is. It's not there.

MR. HARRINGTON: I'm referring to paragraph 42 of the pre-sentence investigation report.

Q. (By Mr. Harrington) Sir, is there fingerprints that you compared in connection with case number 6891 out of Hanford, California?

A. Yes.

Q. And with respect to paragraph #38, was there a case from California—

MR. HARRINGTON: One moment, Your Honor.

Q. (By. Mr. Harrington)—entitled or captioned 6271?

A. I do not see a fingerprint card for 6271.

MR. HARRINGTON: Hold on one minute.

Q. (By Mr. Harrington) I'd like to refer your attention to Exhibit No. 3, the third page.

A. Okay. On Exhibit—

Q. This would be Exhibit No.—

[486]

A. —No. 3

Q. —No. 3. And if you go back to the—

A. Yes. It would be the—the card dated or received 8-21 of '82. That would be on the fingerprint card. And I do have that. Yes. I do have that.

Q. For case number 6271? And I want to refer your attention—maybe what I'll do is—

THE COURT: These are in evidence. So maybe you can just look at them and tell us what dates they are and which convictions they are.

MR. HARRINGTON: All right. I'm looking at the California conviction dated—

THE COURT: Exhibit what?

MR. HARRINGTON: This would be Exhibit —part of Exhibit No. 3.

THE WITNESS: Okay.

THE COURT: You don't need to answer. They're in evidence. So unless—you could just tell us which ones apply to which—

MR. HARRINGTON: Okay.

THE COURT: —and the defense can tell us if they object.

MR. HARRINGTON: Okay. Exhibit No. 3 contains fingerprints from the two California convictions. And as part of that, there is a page—and it's the fourth page of that [487] exhibit, and there's a number—

THE COURT: There's a number of California convictions. So I'm just trying to look at the pre-sentence report and see which ones you are now identifying.

MR. HARRINGTON: I'm referring to a date of April 15th of 1980 in file number 6271, and there's fingerprints attached to that conviction.

THE COURT: It's your position that that's paragraph 38?

MR. HARRINGTON: There's a reference to a grand theft auto. But I don't believe that the pre-sentence report had that—the other burglary conviction listed, and it was identified subsequently to the probation office.

THE COURT: All right. Are you saying it's not in the pre-sentence report?

MR. HARRINGTON: It appears that way, Your Honor.

THE WITNESS: No. There are two cards in that Exhibit 3.

MR. HARRINGTON: Okay. There's two fingerprint cards, one for the 1980 conviction in case number 6271 and a second set of cards for a 1982 burglary conviction in case number 6891.

THE COURT: And 6271 is the one that's in paragraph 38?

MR. HARRINGTON: Well, paragraph 38 refers to a grand [488] theft; and I believe there were two charges in that case. One was grand theft, and the other was burglary. And the exhibits—the government has provided the certified copy of the judgment and commitment order in that case.

THE COURT: All right. Let me see Exhibit 3.

(Materials were handed to the Court.)

MR. HARRINGTON: And, Your Honor, you may want to refer as well to Exhibit No. 4.

(Materials were handed to the Court.)

THE COURT: Is there a contention that this burglary that's now in the pre-sentence report changes any of the analysis of the base offense level or armed career criminal?

MR. HARRINGTON: It doesn't, Your Honor, because I believe for the guideline purposes, it washes out under the age of the conviction.

THE COURT: All right. Okay.

MR. HARRINGTON: But this document has been provided to Counsel and has been part of the briefing in this case.

THE COURT: All right. Okay.

MR. HARRINGTON: I don't have any further questions.

THE COURT: All right. Well, I still don't know what the other convictions are from the pre-sentence report that he has identified. If you can just tell me. We now have—he's identified the one in paragraph 42.

MR. HARRINGTON: The fingerprints associated—

[489]

THE COURT: Another California one. Which one? There's a number of California convictions in here.

MR. HARRINGTON: This would be Exhibit No. 4, which is the burglary conviction in 1980. And I don't believe that's included in the pre-sentence investigation report.

THE COURT: All right. Are those the only two California ones he's identified?

MR. HARRINGTON: Correct.

THE COURT: So you're not relying—and then we move to Spokane?

MR. HARRINGTON: Yes. Those two—the two burglary convictions out of California are Exhibits No. 4 and 5.

THE COURT: All right.

MR. HARRINGTON: Then we move to Spokane.

THE COURT: And which ones are there? Paragraph what?

MR. HARRINGTON: Exhibit No. 6 is in reference to Case No. 95—Spokane County Case No. 95-1-01070, and that's at paragraph 75 of the PSR.

THE COURT: Isn't that paragraph 64?

MR. HARRINGTON: With respect to paragraph 64, that's government Exhibit No. 7; and that's in connection with Spokane County Superior Court Case No. 95-1-01071-8. And Exhibit No. 8 refers to Spokane County Superior Court Case No. 95-1-01089-1 at paragraph 84 of the pre-sentence investigation report.

[490]

THE COURT: Okay. Thank you.

MR. HARRINGTON: Thank you, Your Honor.

THE COURT: Any questions, Ms. Deater?

MS. DEATER: No, Your Honor.

THE COURT: All right. You may step down. Does that conclude the testimony?

MR. HARRINGTON: It does, Your Honor.

THE COURT: All right. Let me tell you what I thought I would do, and I'll give you my preliminary ruling so then you'll know what do argue about.

None of the testimony you put on, Mr. Harrington, changes the analysis under the briefing or the pre-sentence report. Correct?

MR. HARRINGTON: That's correct, Your Honor.

THE COURT: All right. In order to find that Mr. Rodriguez [*sic*] is an armed career criminal, I would have to be able to include in that analysis the State of Washington's convictions for drug offenses. The statute prescribes the drug offense and carries a five-year penalty. And it's—the number is—the Washington statute ends in the number 401, I think. And then in a subsequent penalty provision ending in I think number 408, if a person has been convicted of a previous offense, then the sentence is doubled. And so the question is because he received and was sentenced under the ten-year provisions whether or not those become drug offenses for which [491] there's been an—either a controlled substance or crime of violence where the sentence was ten years or more.

I find that I'm bound by the *Corona* decision out of the en banc panel of the Circuit, which took a statute in California that made the penalty for petty theft six months if it was the first offense and then, in a different statute, increased that if it was more than a first offense to a year; and the Circuit had to determine whether the person who had been convicted a second time and therefore received the year sentence would have their—I think the question was whether it was an aggravated felony, because with the sentence being a year or more, it met the definition the Circuit was trying to apply and concluded that you had to use the statute of conviction.

There's an unpublished opinion after that that seems to distinguish *Corona* where the penalty provision is in the same statute. It's unpublished, so we can't cite it. But it seems to be *Corona* tells me that in Washing-

ton, the drug offenses are five year offenses and that the Court, under *Corona*, cannot look to the enhancement that's done. It must look at the five years, which makes them then not applicable as armed career criminal as a matter of law under that provision; and so he would not be an armed career criminal.

The second question I had to address was criminal history. I don't find that the driving without a license is governed by [492] the driving while license suspended case of *Redmond v. Moore* and, if it were, that the factual basis I have and the burden to show that the offense shouldn't apply is on the defendant and has not been met. So I would deny the request that I not count that offense.

I also find that two of the State of Washington offenses, 95-1-01071-8 and 95-1-01070-0, are unrelated; and that results in a base offense level of 24. I find that I cannot use the fact that the firearm was stolen or obliterated because of the *Blakely* decision. That would have had to have been presented to a jury. The case was tried, of course, before that decision; but the jury was not asked to do that. So it having not been found beyond a reasonable doubt by a jury, and it would have enhanced the sentence above a base offense level of 24, I'm precluded from doing that as a court as a matter of law.

So it's clear, my finding of him not being an armed career criminal is a decision of law based upon the *Corona* decision. In other words, I find as a matter of law that the Circuit has told me that that's how I should apply that provision. So I'm not making any factual determination against the government or in favor of the plaintiff in that regard. It's based upon the

statute and the *Corona* decision's instructions as to how to do that.

I'm making the same ruling as a matter of law I'm [493] precluded from using the fact that the firearm may have been stolen or obliterated because of *Blakely* and *Ameline*.

The no valid operator's license—it's kind of a mixed question of law and fact. I'm finding the burden hasn't been met as a factual basis; and as a legal basis, I don't think that the case involving the unconstitutionality of driving while license suspended applies to driving without a license.

I also find that *Blakely* does not preclude me as a matter of law from taking into account the dates of any types of convictions that increase the base offense level from 20 to 24, that that doesn't have to be done by a jury, that those convictions and the records of them can be done by the Court.

Based upon the government's concession that one of the convictions in Spokane County, 95-1-01089-1, is related, that would make a criminal history category V with a criminal history of 12, so a base offense level that has not been adjusted for any factual determinations of 24 and a criminal history that's not been adjusted because of the concession by the Government of V, which leaves a sentencing range of 92 to 115 months.

Now, before I turn to you people, have I left anything out, Ms. Robinson?

THE LAW CLERK: No.

THE COURT: All right. I think I tried to cover everything that everybody raised. Now, having done that, the [494] government can proceed.

I don't permit lawyers to ask questions of me very often, but is there anything that I didn't cover or that you don't understand? I'm trying to make a record so that if you choose to take it up, you know what was legal and factual, or, if the plaintiff does, what was legal and factual.

MR. HARRINGTON: Your Honor, I think you've covered all the issues that have been presented.

THE COURT: All right.

MR. HARRINGTON: There's been extensive briefing, and I think the Court has covered it.

Your Honor, just for the record, I want to object to the Court's analysis and legal conclusion regarding the *Corona* case. It's the government's position, consistent with the briefing, that the enhanced penalty provision under the Washington State statutes is not an enhancement but is automatically applied.

THE COURT: How do you distinguish *Corona*?

MR. HARRINGTON: You know, I'm looking at—I'm looking at Washington state law and how they apply—

THE COURT: But if you just look at the two statutes, and one is—if it's a first offense, it's X, and if it's another one, it's Y, how do you distinguish them?

MR. HARRINGTON: You know, I'm not in a position to do that, to distinguish it at this point with respect to [495] *Corona*, because I don't feel like I'm

comfortable enough with the California statutes at this point.

THE COURT: All right.

MR. HARRINGTON: But clearly, it's—

THE COURT: I can't find I can distinguish it, so that's why I asked.

MR. HARRINGTON: Well, so the government wanted to object to that legal conclusion.

Secondly, the government is objecting to the application of *Blakely* with respect to the enhancement for the stolen firearm, understanding that the Court is making that finding as a matter of law and the uncertainty with the *Blakely* decision at this point.

THE COURT: All right.

MR. HARRINGTON: Thank you, Your Honor.

THE COURT: Anything else you want to say about the sentence?

MR. HARRINGTON: Your Honor, it's the government's position the Court should impose the high end, given the nature and circumstances of this case, and given Mr. Rodriguez's [*sic*] extensive and lengthy history.

THE COURT: All right.

MR. HARRINGTON: It's the government's position that if there's ever a career criminal or someone that's made a career out of crime, it's Mr. Rodriguez [*sic*].

[496]

THE COURT: Okay. Would you come up, Ms. Deater and Mr. Rodriguez [*sic*].

Mr. Rodriguez [*sic*], have you gone over the presentence report with Ms. Deater?

THE DEFENDANT: Yes, I have.

THE COURT: Do you have any changes or additions you want to make other than those have been thoroughly addressed by her?

THE DEFENDANT: No, Your Honor.

THE COURT: Anything you'd like to say prior to sentence?

THE DEFENDANT: Well, all I've got to say, Your Honor, is that it just took me a little longer than the average person to finally grow up. And I was headed in the right direction when this happened. So—you know—things happened in my past that have been biting me on the butt ever since I've been in trouble, from the littlest things to the biggest things. You get pulled over; and they open the—and the computer comes on with your prior history, and you're already in trouble. All I got to say is that—you know—that I found Jesus Christ. That's pretty much—strange enough.

MS. DEATER: Ms. Deater?

MS. DEATER: Your Honor, much of our time has been put into the legal issues and addressing and crunching numbers [497] and looking at cases and trying to determine statutes. And I'm concerned that we haven't spent enough time addressing the Court in discussing Mr. Rodriguez [*sic*] himself, not just his criminal history and how it fits into the scheme of things

post-*Blakely*, pre-*Blakely*, Washington doubling statute, et cetera.

There are several people in the courtroom today— Mr. Rodriguez's [*sic*] family, his friends—that would like to address the Court. I don't know if the Court is aware or not Mr. Rodriguez [*sic*] was going back to school. He wanted to be a counselor. There was money found by the police when they came into the house. There was money found by the police when they came into the house. There was an assumption that that money was drug money. But there was an envelope from the community college, and there's a lady in the courtroom to testify if—or—to address the Court in regards to her program and that they were helping to fund Mr. Rodriguez [*sic*], to fund his education, that he was going to school. He had goals. He had hopes. He had a direction that he wanted to go to. Notwithstanding everything else, he had hopes; and he had people around him that he cared for and people around that cared for him as well.

I know the Court has a discretion to make a determination where in the standard range to sentence Mr. Rodriguez [*sic*]. I know there is the—it's possible to have this feeling that he dodged a huge bullet, and I'm sure this case will go up to the appellate court. But I think that it's easy to come to that [498] conclusion that he dodged this big bullet. But point of fact is the ACCA cases come down where they come down. The rules come down where they come down on people. Whether they find themselves under the provisions of ACCA or not by a technicality on one side or the other, the fact is ACCA doesn't apply to Mr. Rodriguez [*sic*] because his prior convictions were five-year convictions

and not because they were more. They've been contemplated in the guideline range. They've been contemplated by this Court in the offense level from 20 to 24. And so it's important—and again, I want to reiterate—and I hope I'm not repeating myself, but I find I am—that we want the Court to know more about Mr. Rodriguez [*sic*] than what was heard at trial and what was presented in the pre-sentence report. I didn't notice in the pre-sentence report any discussion about Mr. Rodriguez's [*sic*] goal for going back to school. Mr. Rodriguez [*sic*] has had a drug problem for a long time. I don't believe he's ever been in any inpatient care for that. And when he goes to prison, he intends to go through the drug treatment program—any program that's available to him.

THE COURT: What are you asking me to do?

MS. DEATER: Well, we're asking this Court to sentence Mr. Rodriguez [*sic*] to low end of the range. He's already looking at 92 to 115 months. 92 months is an awfully long time to have. As the jury determined, a gun—

THE COURT: Let me put it differently. Are you [499] asking me to hear testimony, or are you just asking me to know that people are here?

MS. DEATER: I'm asking if the Court—not testimony. But if the Court would allow people to—allow them to just address the Court.

THE COURT: I will. Let me just tell you my situation. Judge Rodriguez is being sworn in to the bench in Seattle this afternoon, and it's a big day because he's Hispanic. I'm going, and my plane is at 1:30. So I can—I don't want to short shrift you, so—I can only give you a short amount of time, but I can also

do this tomorrow. I've made my legal rulings. And if you feel like you can't get it done—I've probably got to leave here in 20 minutes.

MS DEATER: It's important enough, Your Honor, that to have the appropriate amount of time, we'd ask, then, to come back tomorrow.

THE COURT: All right. What time do you have tomorrow, Ms. Fox?

THE COURTROOM DEPUTY: 10:00.

THE COURT: All right. Well, so it's clear, I'm considering these other issues closed. In other words, I'm just talking now between 92 and 115 months. So I don't want to get back in the other stuff. If there's anything about any of the other rulings I've made, I want to hear it today, so that the only thing we're talking about is the standard range. [500] Is that where you are?

MS. DEATER: Yes, Your Honor. At this point, we're only talking about standard range.

THE COURT: Mr. Harrington?

MR. HARRINGTON: I understand the Court's ruling.

THE COURT: All right. Well, I'm going to exercise my discretion to continue it till tomorrow so that you can put on whatever you want to do.

Ms. Fox, what time can we do it?

THE COURTROOM DEPUTY: 10:00 tomorrow.

THE COURT: 10:00.

MS. DEATER: Thank you, Your Honor.

THE COURT: See you in the morning at 10:00.

(The proceedings recessed at 12:20 p.m.)

[501]

CERTIFICATE

I, DEBRA KINNEY CLARK, do hereby certify:

That I am an Official Court Reporter for the United States District Court at the Eastern District of Washington;

That the foregoing proceedings were taken on the date and at the time and place as shown on page i here to; and

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings.

DATED this *23rd* day of *November*, 2004.

/s/ DEBRA KINNEY CLARK
DEBRA KINNEY CLARK
Official Court Reporter
United States District Court
Eastern District of Washington

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

No. 03-CR-142-RHW
Spokane Washington Appeal Transcript

UNITED STATES OF AMERICA, PLAINTIFF

v.

GINO G. RODRIGUEZ [*sic*], DEFENDANT

Sept. 3, 2004
Proceedings

Volume 8

BEFORE THE HONORABLE ROBERT H. WHALEY UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings reported by mechanical stenography; transcript produced by computer-aided transcription.

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[502]

(September 3, 2004; 10:40 a.m.)

THE COURTROOM DEPUTY: We have *United States of America v. Gino Rodriguez* [*sic*], Case No. CR-03-142. Time set for the continuation of the sentencing.

MR. HARRINGTON: Your Honor, this is the continuation of the sentencing hearing yesterday. I think the Court continued it to take testimony from witnesses on behalf of the defense. Just as a housekeeping matter, I want to just clarify for the record, Your Honor, the government did move for the admission of Exhibits No. 1 through 8 yesterday, and I believe that they were, in fact, admitted.

THE COURT: I think they were. If they weren't, I think Ms. Deater said she had not objection.

MR. HARRINGTON: That's correct. Thank you.

THE COURT: So they're admitted now if I didn't do that yesterday.

If we're not done by 11:00, I'm going to have to interrupt to take a civil motion. It shouldn't take long, but I want to get it out of the way. And then we have the rest of the day.

All right. Ms. Deater?

MS. DEATER: Unless any of the parties have an objection, I was just going to call some of the people to the podium to address the Court. I've got a proffer for the Court from Ms. Joyce McKee (phonetic). She works for the Department of Vocational Rehabilitation through SCC. She dealt with [503] Mr. Rodriguez [*sic*] as he went through the motions and the procedures of getting financial aid, getting some other aid—bus passes, some

help for some dental work—to help support him while he was going through school. I've already shown these to the government. I don't believe there's any objection to the simple proffer.

MR. HARRINGTON: Not for the proffer, Your Honor.

THE COURT: All right.

MS. DEATER: May I approach, Your Honor?

THE COURT: Yes.

(Materials were handed to the Court)

MS. DEATER: I would ask Ms. Joyce McKee to come forward to address—

THE COURT: Let me read this first.

MS. DEATER: Okay.

(The Court reviewed materials.)

THE COURT: All right.

MR. HARRINGTON: Your Honor, I would request the witnesses take the witness stand in case there's any questions that the government may want to ask.

THE COURT: Well, what I'll do is I'll let them speak from there; and if you have questions, I'll let you do that.

MR. HARRINGTON: Thank you.

THE COURT: I'd invite Ms. Joyce McKee to address the Court, Your Honor.

[504]

THE COURT: All right. Go ahead. So you understand what we're doing. I've already determined the sentencing range. And you're going to talk to me a minute, but the government may want to put you under oath and ask you questions when we're through.

JOYCE McKEE: Okay.

THE COURT: Okay. Go ahead.

JOYCE McKEE. Gino applied for services through the Division of Vocational Rehabilitation.

THE COURT: What is your name again?

JOYCE McKEE: Joyce McKee.

THE COURT: Okay. Go ahead now.

JOYCE McKEE: Gino applied for services through the Division of Vocational Rehabilitation on July 18th, 2002. He was interested in the field of substance abuse counseling. He expressed an interest in working with troubled youth or alcoholics and substance abusers.

We developed a plan for him to attend Spokane Community College and Spokane Falls Community College to prepare for a career as a substance abuse counselor, working with at-risk youth. He completed two quarters at SCC. He was dedicated to his training program and was most appreciative of the assistance provided by the Division of Vocational Rehabilitation. He was looking forward to having a career. He was very cooperative throughout the time I worked with him.

[505]

And I'll also read a letter that Gino wrote at the time our agency had offered to help him with some dental services.

(Reading) Joyce: I just want to thank you and DVR for wanting to help me with my dental problem. DVR and you have helped me so much. I can't say thank you enough. I just want you to know that I know it's a hand up, not a hand out; and I'm going to use the help and take full advantage to better myself. Thanks to you and DVR. It might not have happened. Thank you, Gino Rodriguez [*sic*].

THE COURT: What is the name of your agency?

JOYCE McKEE: The Division of Vocational Rehabilitation. We're part of the Department of Social and Health Services.

THE COURT: All right. Okay. Any questions of her, Mr. Harrington?

MR. HARRINGTON: No, Your Honor.

THE COURT: All right. Thank you.

ALAN DORENBOS: Good morning, Your Honor. My name is Alan Dorenbos, and I thank you for the opportunity to speak on Gino Rodriguez's [*sic*] behalf.

May I ask Gino a quick question before I begin?

THE COURT: Ask him a question?

ALAN DORENBOS: Yes. It will only take a moment.

THE COURT: You want to go speak to him?

ALAN DORENBOS: Yes. I just have a quick question [506] for him. Yes. If I could.

THE COURT: Do the marshals have any objection?

ALAN DORENBOS: I won't go any farther than that chair, Your Honor.

A DEPUTY MARSHAL: That's fine, Your Honor. Thanks for asking.

(Mr. Dorenbos, the defendant, and Ms. Deater conferred off the record.)

ALAN DORENBOS: My name is Alan Dorenbos. I had the unfortunate experience of spending some eleven and a half years with the Department of Corrections in the State of Washington from a conviction in 1992. And during that time, I had the very fortunate experience of meeting Gino Rodriguez [*sic*], and I would like to tell this Court a little bit about Gino Rodriguez [*sic*].

Before I do that, I would like to just mention something about me to the Court so that you may have a better feeling about me. After my conviction in 1992, I hired a scientist, an audio forensic expert from the Federal Bureau of Investigation, to investigate the alleged— the confession tape—the audio tape recording of the police interrogation that the police took of me and used in court to gain a conviction. That audio investigation has not been completed because since then, on three occasions, the defense counsel, the King County Superior Court, and the prosecuting attorney simultaneously lost the [507] court records, all of the court records; and they don't have any that exist on me. So that is still a continuing thing. So I have perhaps a bit

of unique experience of knowing the extent of the power of the government and some of the things that they can do.

One of the first things I would like to bring to the Court's attention is what is in the pre-sentence report. Although I have not read it, I am quite certain that the State of California knew and that Washington State knew—and—I'm sorry—I don't know what the U.S. attorney's name is. May I ask your name?

MR. HARRINGTON: What difference does it make?

ALAN DORENBOS: And the attorney sitting behind me knows that Mr. Rodriguez [*sic*] suffers from a chemical dependency, and he's had that for quite a number of years. And yet during the entire period of time that he has had incidents with the law enforcement agencies, I don't believe he has received or been put in any chemical dependency program.

At the request of Chief Justice Rehnquist, the president of the American Bar Association, Dennis W. Archer stated that he is in favor of removing the unnecessary legal barriers that prevent released inmates from becoming productive members of society. Right now, the deck is permanently stacked against many of them; and an invisible web of state and federal laws block their path to redemption.

[508]

Gino Rodriguez [*sic*] mentioned briefly yesterday how his past is coming to haunt him or how it's been difficult to break free, and yet he was attending school and trying to overcome those many obstacles which we are faced with. The U.S. Attorney would recommend

that this Court be guided soley by Gino Rodriguez's [*sic*] past; and I would say that this Court should be guided also and perhaps more strongly by Gino Rodriguez's [*sic*] future, because the steps that he took to try to improve himself and improve others were significant, and the obstacles that he faced were significant.

If Gino Rodriguez [*sic*] had been born in Switzerland or Holland or many other parts of Europe, all these documents, all these briefs, all these hearings would never have come to pass, because he would have received treatment early on down in California when he first had incidents with the government in criminal affairs—in what was a criminal event, all related to criminal dependencies. In the words of Judge Gray, it would make no sense to send Robert Downey, Jr., to prison any more than it would be to send Mrs. Gerald Ford to prison for her alcoholism for treatment.

The other thing I'd like to mention is I had an opportunity to live with Gino Rodriguez [*sic*] while in prison for a couple of years. And I think of all the environments that I've been in, that was one of the ones where you can best learn the true nature of a person. I found prison to be an environment [509] where it is oftentimes dominated by fear, us versus them, racial hatred oftentimes supported or encouraged by some DOC staff or some of the guards. At all times in all the things I've seen Gino Rodriguez [*sic*] do while he was in prison, he never exhibited any racism on his sports teams, which I was a party of. There were members of all racial groups, which was extremely rare. He came to the aid of those who were oftentimes somewhat defenseless in that environment. He encouraged people to improve themselves. And in an environment that was

short on integrity, I found Gino Rodriguez [*sic*] to be true to his word. And he is a person that I will always consider a friend.

I would ask this Court to consider that Gino Rodriguez [*sic*] be given the low end of the sentencing range, or less, since I believe that anything that happened began long ago with what began as a chemical dependency on drugs, which we are starting to realize should perhaps be treated by the Surgeon General rather than the Attorney General, but, more than anything else, because of his true nature and character. I don't believe for a moment that he is a career criminal. I don't believe that's in his heart. I don't believe that's in his soul. And the incident where a few hours after a handgun had been delivered and a number of folks showed up from somebody who was attending school to be a counselor—I know that Gino, if he was a participant, was an unwilling participant in that. And I ask [510] the Court for the best that you can do for Gino Rodriguez [*sic*]. Thank you.

THE COURT: Mr. Harrington?

MR. HARRINGTON: Your Honor, I just have a couple short questions of this gentleman.

ALAN DORENBOS: Certainly.

THE COURT: All right. Come on up and take the stand, Mr. Dorenbos.

THE WITNESS: Thank you.

THE COURTROOM DEPUTY: Sir, would you raise your right hand?

(WITNESS, ALAN DORENBOS, called as a witness on behalf of the plaintiff, having first been duly sworn, testified as follows:)

THE COURTROOM DEPUTY: Have a seat. And if you could spell your first and your last name for us, please, for the record.

THE WITNESS: My name is Alan, A-l-a-n, Dorenbos, D-o-r-e-n-b-o-s.

DIRECT EXAMINATION

BY MR. HARRINGTON:

Q. Mr. Dorenbos, just for the record, are you a chemical dependency counselor?

A. No.

Q. Do you work in the chemical dependency field?

A. No.

[511]

Q. Do you have any training or experience in that field?

A. No.

Q. So when you were making your assertions that Mr. Rodriguez [*sic*] has a chemical dependency, is that just based on your personal opinion?

A. No.

Q. And what training and experience is that based on?

A. The information that I received from counselors at the Department of Corrections in Airway Heights. Listening to also their recommendations for Gino Rodriguez [*sic*]. That was their expert opinion.

Q. All right. So you're relying on hearsay—information provided from them?

A. No. I heard it from them directly.

Q. Okay. So from other people. And do you know what their training and experience is in chemical dependency matters?

A. Extensive. That was their job.

Q. Okay. And you know that for sure?

A. Yes.

Q. All right. What other—can you just describe what your conviction is for?

A. Second-degree murder.

Q. And do you have any other prior convictions, or is that—

A. None.

Q. That's the only one. And was that second-degree murder [512] conviction out of King County?

A. Yes.

Q. Is that right? And you also said that Mr. Rodriguez [*sic*] was attending school to become a drug dependency counselor. Is that your understanding?

A. Yes.

Q. Do you know at the time of his arrest, he was in possession of heroin?

A. Yes.

Q. And—

A. I heard that that was said to be found in—somewhere.

Q. Okay. And you said that you don't—wouldn't describe Mr. Rodriguez [*sic*] as a career criminal; is that right?

A. Absolutely not.

Q. Are you aware of what his entire criminal history is?

A. Absolutely.

Q. Do you know all of the convictions that Mr. Rodriguez [*sic*] has?

A. I believe I've heard most of them from sitting in here.

Q. Okay. And other than what you're heard here in the courtroom, are you aware of any other convictions that Mr. Rodriguez [*sic*] has had?

A. No.

MR. HARRINGTON: I don't have any further questions. Thank you, Your Honor.

[513]

THE COURT: All right. Counsel?

MS. DEATER: None, Your Honor.

THE COURT: All right. You're excused.

THE WITNESS: Thank you.

THE COURT: Anything else?

MS. DEATER: We'd rest, Your Honor.

Your Honor, again, as we said yesterday, and we'll get to the point, we don't want the Court to forget about Gino as a person. Again, we spent so much time briefing this issue—

THE COURT: I need you to talk a little louder.

MS. DEATER: Again, we spent so much—

THE COURT: What I'm going to do—Ms. Fox, would you go in and—can you have Nancy or somebody get on that conference call? I'm not—

MS. DEATER: I understand.

THE COURT: I don't want to prevent you from making all the argument you want. So if I can get on the conference call and tell them to wait or call back in 15 minutes, that would then give you whatever you need.

MS. DEATER: Thank you, Your Honor.

THE COURT: All right. Go ahead.

MS DEATER: We didn't want the Court to lose sight of who Mr. Rodriguez [*sic*] is as a person, not just his criminal history, not just what's contained in the

PSR, not just the indictment, not just the conviction. [514]

I worked with Mr. Rodriguez [*sic*] for several months on this. It's been very emotional. Mr. Rodriguez [*sic*]—what you don't think about frequently is the stress somebody goes through when they're dealing with the fear of spending possibly the rest of their lives behind bars. I've worked with—I don't think I've worked with many people that were facing as much time as Mr. Rodriguez [*sic*]. And I have to say, in my opinion, Mr. Rodriguez [*sic*] is quite a courageous individual. He dealt with—he dealt with all of this with grace. And he's had many friends and family members calling frequently, visiting frequently in support of him. He has many connections to family and friends. That tells you something about Mr. Rodriguez [*sic*]—not that—he wasn't alone while he was sitting at the county jail, waiting for his sentencing.

Zach Putnam is—was a young man that lived with Mr. Rodriguez [*sic*] for a period of time—Tammi Putnam's son. Tammi Putnam is Mr. Rodriguez's [*sic*] daughter (sic). She's present in the court in support of Mr. Rodriguez [*sic*]. Mr. Putnam wrote a letter to Mr. Rodriguez [*sic*], and I'll summarize it briefly. It's several paragraphs long. It's basically telling Mr. Rodriguez [*sic*] he was the only father that he's ever really known and that he thanked Mr. Rodriguez [*sic*] for supporting him and encouraging him to be all that he could be. And right now, Mr. Putnam is in college in Tulsa, Oklahoma; and we thought it was important for the Court to recognize that he has Mr. Putnam's support as [515] well.

In the end, Your Honor, based on what the Court heard, based on what the jury heard during the trial, I don't think it's unfair to summarize the evidence as showing that the firearm was in the apartment for probably less than 48 hours. I don't believe there was any testimony to say that Mr. Rodriguez [*sic*] had gone out to procure a firearm but, rather, it had been brought to the house by the young men. 92 months is a long time for that, Your Honor. Mr. Rodriguez [*sic*] understands that's part of the standard range that the Court is considering. We would maintain to the Court that 92 months is a sufficient penalty for the crime the jury found Mr. Rodriguez [*sic*] guilty of, and we'd ask the Court to impose the low end of the sentencing range.

THE COURT: Anything you want to say, Mr. Rodriguez [*sic*]?

THE DEFENDANT: Everybody pretty much summed it up. I've learned from this experience. I'll tell you that.

THE COURT: I had a man earlier today who was found to be an armed career criminal. And looking at it, I told him—and I guess in trying to determine what to do in the standard range with you, one of the things that I consider is: Do I think somebody is dangerous? Because when I—I sort of divide sentencing up into a number of different categories, not that I get to say a whole lot about it because the guidelines pretty much govern it. But one is: What's needed to get this [516] person not to offend again? And I think many times the sentences may be longer than is necessary for that if you're trying to get someone's attention and show them there's consequences. That's one. And another is to prevent other people from committing offenses. And

one is where there are victims to crimes, their need for retribution. Those usually involve some sort of crime of violence or some crime against an individual as opposed to a status crime like this. And then the other is: Is the person dangerous? If they're dangerous, then there's a desire to put them away for a longer period of time to protect society from them ever doing that again.

I've thought back on the facts of your conviction and your criminal history. And to the extent you're dangerous because it's predicted by your history, it doesn't cause me to think that 92 months isn't appropriate. That's a long time. So I'm going to sentence you to 92 months. I'm going to put you on supervised release for three years. I'm going to waive the fine and impose a $100 special penalty assessment.

Now, what that means is that during that three-year period, you're going to be under the jurisdiction of the probation department; and it will include drug treatment, drug analysis, urinalysis, a provision that you can be searched in your person and in your home and car to see if you're in compliance with the orders of the Court. You'd be subject to mental health counseling and treatment if it's found [517] appropriate.

I'll recommend that you get drug treatment while you're incarcerated. I'm not sure it will make any difference in the amount of time you'll do. But it would—to the extent your problem is drug related, which it seems that's one of your problems, that possibly can be addressed.

Have I left anything out besides the right to appeal, Counsel? Ms. Petretee?

THE PROBATION OFFICER: No, Your Honor.

THE COURT: You have a right to appeal this sentence. If you don't appeal it within ten days, you lose that right. You have a right to appeal your conviction as well. You have a right to a transcript of the proceedings necessary to take your appeal, and all of that would be provided at no expense to you if you can't afford it; and Ms. Fox would file a notice of appeal for you today if you asked.

Anything further?

MS. DEATER: No, Your Honor. Thank you.

THE COURT: Court's in recess.

(The proceedings recessed at 11:10 a.m.)

[518]

CERTIFICATE

I, DEBRA KINNEY CLARK, do hereby certify:

That I am an Official Court Reporter for the United States District Court at the Eastern District of Washington;

That the foregoing proceedings were taken on the date and at the time and place as shown on page i hereto; and

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings.

DATED this *23rd* day of *November*, 2004.

/s/ DEBRA KINNEY CLARK
DEBRA KINNEY CLARK
Official Court Reporter
United States District Court
Eastern District of Washington

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

Case Number: 2: 03CR00142-001
USM Number: 10756-085

UNITED STATES OF AMERICA

v.

GINO G. RODRIQUEZ

[Filed: Sept. 15, 2004]

JUDGMENT IN A CRIMINAL CASE

☐
☐

THE DEFENDANT

☐ pleaded guilty to count(s) _____
☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.
☒ was found guilty on count(s) 1 of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm	04/01/03	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)
☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/3/2004
Date of Imposition of Judgment

/s/ *ILLEGIBLE*
Signature of Judge

The Honorable Robert H. Whaley
Name and Title of Judge

Judge, U.S. District Court

September 15, 2004
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 92 month(s)

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends defendant participate in drug and alcohol treatment program while incarcerated pursuant to U.S. Bureau of Prisons guidelines.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 3 year(s)

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable)

☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as

directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of and contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

14. You shall provide the supervising probation officer with access to any requested financial information, including authorization to conduct credit checks and obtain copies of your Federal income tax returns. You shall disclose all assets and liabilities to the supervising probation officer. You shall not transfer, sell, give away, or otherwise convey any asset, without the advance approval of the supervising probation officer.

15. You shall undergo a substance abuse evaluation and, if indicated, enter into and successfully complete an approved substance abuse treatment program, including aftercare. You shall contribute to the cost of treatment according to your ability. You shall allow full reciprocal disclosure between the supervising probation officer and treatment provider.

16. You shall abstain from the use of illegal controlled substances, and shall submit to urinalysis testing, as directed by the supervising probation officer.

17. You shall submit your person, residence, office, or vehicle to a search, conducted by a U.S. probation officer, at a sensible time and manner, based upon reasonable suspicion of contraband or evidence of violation of a condition of supervision. Failure to submit to search may be grounds for revocation. You shall warn persons with whom you share a residence that the premises may be subject to search.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$100.00		

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☒ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All

criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case numbers (including defendant number) and Defendant and Co-Defendant Names, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

STATEMENT OF REASONS
(Not for Public Disclosure)

☐ THE COURT ADOPTS THE PRESENTENCE REPORT AND GUIDELINE APPLICATIONS WITHOUT CHANGE.

OR

☒ THE COURT ADOPTS THE PRESENTENCE REPORT AND GUIDELINE APPLICATIONS BUT WITH THESE CHANGES: (Use Page 3, if necessary.)

- ☐ **Chapter Two of the U.S.S.G. Manual** determinations by court (including changes to base offense level or specific offense characteristics):
- ☐ **Chapter Three of the U.S.S.G. Manual** adjustment determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):
- ☒ **Chapter Four of the U.S.S.G. Manual** determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):

☐ **THE COURT ADOPTS THE PRESENTENCE REPORT WITH THESE COMMENTS OR FINDINGS** (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions. Specify court comments or findings, including para-

graphs in the presentence report.) (Use Page 3, if necessary.)

GUIDELINE RANGE DETERMINED BY THE COURT (BEFORE DEPARTURES):

Total Offense Level: 24

Criminal History Category: V

Imprisonment Range: 92 to 116 months

Supervised Release Range: 2 to 3 years

Fine Range: $ 10,000 to $ 100,000

☒ Fine waived or below the guideline range because of inability to pay.

☒ **THE SENTENCE IS WITHIN THE GUIDELINE RANGE, THAT RANGE DOES NOT EXCEED 24 MONTHS, AND THE COURT FINDS NO REASON TO DEPART.**

OR

☐ **THE SENTENCE IS WITHIN A GUIDELINE RANGE, THAT RANGE EXCEEDS 24 MONTHS, AND THE SPECIFIC SENTENCE IS IMPOSED FOR THESE REASONS:** (Use Page 3, if necessary.)

STATEMENT OF REASONS
(Not for Public Disclosure)

ADDITIONAL PRESENTENCE REPORT AND GUIDELINE APPLICATION CHANGES
(If necessary.)

The Court found that the defendant was not an armed career criminal because the predicate offenses did not qualify under federal law. United States v. Corona-Sanchez, 222 F.3d 1201 (9th 2002). The Court did not apply the enhancement for a stolen gun pursuant to Blakely v. Washington, 124S.Ct. 2531 (2004).

SPECIFIC SENTENCE IS IMPOSED FOR THESE REASONS
(If necessary.)

ADDITIONAL COMMENTS OR FINDINGS CONCERNING INFORMATION IN PRESENTENCE REPORT
(If necessary.)

ADDITIONAL REASONS FOR DEPARTING FROM THE GUIDELINE RANGE
(If necessary.)

Defendant's Soc. Sec. No.:	[REDACTED]
Defendant's Date of Birth:	[REDACTED]
Defendant's Residence Address:	Spokane County Jail Spokane, WA 99260
Defendant's Mailing Address:	Same as above

9/3/2004
Date of Imposition of Judgment

/s/ *ILLEGIBLE*
Signature of Judge

The Honorable Robert H. Whaley Judge, U.S. District Court Name and Title of Judge

September 15, 2004
Date Signed

On the page that has statement of reasons, additional presentence report and guideline application changes. Put the following.

The Court found that the defendant was not an armed career criminal because the predicate offenses did not qualify under federal law. United States v. Corona-Sanchez, 222 F.3d 1201 (9th 2002). The Court did not apply the enhancement for a stolen gun pursuant to Blakey v. Washington, 124 S. Ct. 2531 (2004).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

No. CR-03-142-RHW

UNITED STATES OF AMERICA, PLAINTIFF

v.

GINO G. RODRIQUEZ, DEFENDANT

[Filed Sept. 3, 2004]

SENTENCING ORDER

A sentencing hearing was held on September 2, 2004, in Spokane, Washington. Defendant was convicted by jury trial to one Count of Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g). Defendant objects to being classified as an Armed Career Criminal, arguing that his two prior California Convictions for Residential Burglary do not qualify as predicate offenses, nor do his three Spokane County drug convictions. This order memorializes the Court's oral ruling.

DISCUSSION

The Armed Career Criminal enhancement is found in both the United States Criminal Code and the United States Sentencing Guidelines. The statute provides that a person who violates § 922(g) (felon in possession of a firearm) and has three previous convictions for a violent felony or serious drug offense, committed on occasions different from one another, shall receive a minimum 15-year sentence. 18 U.S.C. § 924(e)(1). "Serious drug of-

fense" is defined as: (i) a federal offense under the Controlled Substance Act for which a maximum term of imprisonment of 10 years or more is prescribed by law; or (ii) a state offense involving the manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance for which a maximum term of imprisonment of 10 years or more is prescribed by law. 18 U.S.C. § 924(e)(2)(A). A "violent felony means any crime punishable by imprisonment for a term exceeding one year . . . that (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (ii) is burglary . . . or otherwise involves conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B). Under 4B1.4 of the United States Sentencing Guidelines, a defendant who meets the criteria of 18 U.S.C. § 924(e) is considered an Armed Career Criminal. U.S. Sentencing Guidelines Manual § 4B1.4 (2003).

In determining whether a particular prior offense qualifies as a predicate offense for the Armed Career Criminal enhancement, the court engages in a categorical analysis, in that the court does not examine the facts underlying the prior offense, but "looks only to the statutory definitions of the prior offenses." *Taylor v. United States*, 495 U.S. 575, 600 (1990); *United States v. Wofford*, 122 F.3d 787, 792 (9th Cir. 1997). If the statute criminalizes conduct that would not constitute a "violent felony," the conviction may not be used for sentence enhancement, unless the record includes "documentation or judicially noticeable facts that clearly establish that the conviction is a predicate conviction for enhancement

purposes." *United States v. Potter*, 895 F.2d 1231, 1237 (9th Cir. 1990).

In *Taylor*, the Supreme Court held that the definition of burglary, as used in § 924(e), contains at least the following elements: (1) an unlawful or unprivileged entry into, or remaining in, a building or other structure, (2) with intent to commit a crime. 495 U.S. at 599. Thus, for purposes of a § 924(e) enhancement, if a person has been convicted of burglary, where the statutory definition of burglary includes the basic elements of unlawful or unprivileged entry into or remaining in, a building or structure, with intent to commit a crime, that conviction will qualify as a predicate offense in determining whether a person is an Armed Career Criminal for sentencing purposes.

A. California Convictions

In 1980 and 1982, Defendant was convicted of Residential Burglary in the Superior Court of Kings County, California. Although § 459 of the California Penal Code has been amended since 1980 and 1982, the basic definition of burglary has not changed. Section 459 provides that:

> Every person who enters any house, room, apartment . . . or other building . . . with intent to commit grand or petit larceny or any felony is guilty of burglary.

Cal. Pen. Code § 459 (2004).

Courts interpreting § 459 of the California Penal Code have held that this statute does not qualify as a "violent felony" under the strict categorical approach approved in *Taylor*. *United States v. Parker*, 5 F.3d

1322, 1324 (9th Cir. 1993). These courts then engaged in a "modified categorical" approach in which the courts looked at other documents and judicially-noticeable facts to determine whether the offense was within the Guidelines' definition. *Id.*; see also *United States v. Shumate*, 329 F.3d 1026, 1029 (9th Cir. 2003). If the statute, together with other documents and the judicially-noticeable facts, demonstrates that the defendants could have been "convicted of an offense other than that defined as a qualifying offense," the offense cannot be used to enhance defendant's sentence. *United States v. Navidad-Marcos*, 367 F.3d 903, 908 (9th Cir. 2004).

1. Defendant's 1980 California Conviction

The Government provided certified copies of documents relating to Defendant's 1980 conviction (Ct. Rec. 70, Attach. D), including the 1980 Amended Information and copies of the abstract of Defendant's arraignment, the State's motion to file the amended Information, Defendant's plea to the charged burglary, and the Commitment and Sentence.

The Amended Information charges in Count 1 that Defendant "did willfully, unlawfully and feloniously, in the nighttime, enter the inhabited dwelling house of Ernest Filippi located at 1504 Middleton, Hanford, with intent to commit theft." Defendant pleaded guilty to Count 1 as charged in the Amended Information. In doing so, Defendant pleaded guilty to unlawfully entering a dwelling house with intent to commit theft, which are the elements that make up the generic definition of burglary. The documents do not demonstrate that Defendant could have been convicted of an offense other

than that defined as a qualifying offense. As such, Defendant's 1980 Calilfornia conviction qualifies as a predicate offense.

2. Defendant's 1982 California Conviction

The Government provided certified copies of documents relating to Defendant's 1982 conviction (Ct. Rec. 70, Attach. E), including the 1982 information and copies of the abstract of Defendant's bail reduction motion, Defendant's plea to the charged burglary, the Probation Office's Recommendation for an Aggravated Sentence, and the abstract of the Judgment imposed.

The Information charges in Count 1 that Defendant "did willfully, unlawfully and feloniously, enter the inhabited dwelling house of M.W. Wolfe, located at 1209 N. Ridengton, Hanford, with intent to commit theft." Defendant pleaded guilty to Count 1. Although the guilty plea did not specifically refer to the Information, it is implicit in the documents that Defendant was pleading to the charge contained in Count 1 of the Information. In doing so, Defendant pleaded guilty to unlawfully entering a dwelling house with intent to commit theft, which, like the 1980 conviction, are the elements that make up the generic definition of burglary. The documents do not demonstrate that Defendant could have been convicted of an offense other than that defined as a qualifying offense. As such, Defendant's 1982 California conviction qualifies as a predicate offense.

The Court finds that the 1980 and 1982 convictions qualify as predicate offenses for purposes of determining whether Defendant is an Armed Career Criminal.

B. Spokane County Convictions

On November 16, 1995, Defendant was convicted under three separate causes of actions for drug offenses that were related to a series of drug transactions that took place in March of 1994, and between October 1994 and January 1995. In each case, Defendant pleaded guilty to violating Wash. Rev. Code § 69.50.401. The maximum penalty for a violation of § 69.50.401 is five years. Under Washington law, however, if a person is convicted of "a second or subsequent offense" relating to narcotic drugs, the maximum penalty is 10 years. Wash. Rev. Code § 69.50.408.[1] This is referred to as the "doubling statute."

The question then is whether, when applying 18 U.S.C. § 924(e), the Court should consider the maximum penalty as provided in the statute of conviction, or consider the maximum penalty that is a result of a sentencing enhancement or doubling statute. In *United States v. Corona-Sanchez*, 291 F.3d 1201 (9th Cir. 2002), the Ninth Circuit, using the *Taylor* categorical approach, [2]

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[1] "(1) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

[2] The Ninth Circuit has applied *Taylor's* categorical approach in a variety of sentencing contexts. *See, e.g., United States v. Martinez*, 232 F.3d 728-33 (9th Cir. 2000) (career offender status pursuant to U.S.S.G. § 4B1.1); *United States v. Ceron-Sanchez*, 222 F.3d 1169, 1172 (9th Cir. 2000) (aggravated felony pursuant to U.S.S.G. § 2L1.2(b)(1)(A)); *United States v. Sandoval-Barajas*, 206 F.3d 853, 855-56 (9th Cir. 2000) (same); *United States v. Casarez-Bravo*, 181 F.3d 1074, 1077 (9th Cir. 1999) (career offender status pursuant to U.S.S.G. § 4B1.1); *United States v. Bonat*, 106 F.3d 1472, 1475 (9th Cir. 1997) (predicate offense under the Armed Career Criminal Act).

addressed a similar issue in determining whether a California conviction for petty theft constituted an aggravated felony under 8 U.S.C. § 1101(a)(43)(G). *Id.* In that case, the defendant's conviction of petty theft carried a maximum penalty of six months.[3] *Id.* at 1207. Under the Sentencing Guidelines, a defendant's prior conviction for petty theft would qualify as an aggravated felony if the term of imprisonment was at least one year. 8 U.S.C. § U.S.C. 1101(a)(43)(G). The defendant, however, received a two-year sentence, due to the application of California Penal Code § 666, which sets forth a sentence enhancement for recidivists.[4] *Id.* In applying the *Taylor* categorical approach, the Circuit separated the recidivist enhancement from the underlying offense, and only considered the maximum possible sentence for the offense of conviction. *Id.* at 1210 ("*Taylor* required us to examine the prior crimes by considering the statutory definition of the crimes categorically, without reference 'to the particular facts underlying those convictions.'") (citations omitted). The Circuit concluded that, on its face, the statute defining the crime of petty theft did not qualify as an aggravated felony under the federal sentencing law. *Id.* at 1211. In rejecting the Gov-

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[3] Although it was not clear in the presentence report, the Circuit concluded that the defendant was convicted of violating California Penal Code § 484(a), which is the general California theft statute. *Id.* at 1206.

[4] Section 666 provides: "Every person who, having been convicted of petty theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of petty theft, then the person convicted of that subsequent offense is punishable by imprisonment in the county jail not exceeding one year, or in the state prison."

ernment's argument that the defendant's conviction for petty theft qualified as an aggravated felony, the Circuit stated that "under the categorical approach, we must consider the sentence available for the crime itself, without considering separate recidivist sentencing enhancements." *Id.* at 1209.

The Court does not see any distinction between the application of § 666 of the California Penal Code to a violation of § 484(a) and the application of Wash. Rev. Code § 69.50.408 to a violation of §69.50.401. In both cases, the application of the separate sentencing statute[5] does not alter the maximum sentence available for the crime itself. In this case § 69.50.401 does not qualify as a predicate offense because the maximum term of imprisonment for violation of this statute does not meet the statutory definition of a predicate offense, as defined in

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[5] The Court notes that, in an unpublished opinion with a somewhat similar scenario, the Circuit reached a different result. See *United States v. Perez*, 2002 WL 31808370 (9th Cir. Dec. 11, 2002). In that case, the Circuit concluded that because the statutory scheme mandated a sentence in excess of one year for a repeat vehicle theft offender, the prior conviction for a theft offense qualified as an aggravated felony. *Id.* at *1. There, however, the crime of conviction, California Penal Code § 10851, fit within the "generic sense in which the term [theft offense] is now used in a criminal code of most States." *Id.* In addition, § 10851 provided for a penalty enhancement for repeat offenders, which increased the maximum penalty beyond the required year. *Id.* Contrast that case to the present case, as well as to another unpublished opinion where the sentencing enhancements are found in separate sections of the criminal code and are not referenced by the statute of conviction. See *Contreras-Castillo v. Ashcroft*, 2003 WL 21153490 (9th Cir. May 16, 2003). In *Contreras-Castillo*, the Circuit reiterated its rule established in *Corona-Sanchez* that only the statute of conviction should be considered without reference to other provisions that enhance the permissible and imposed sentence. *Id.* at *1.

the United States Code. 18 U.S.C. § 924(e) states that a "serious drug offense" is one that involves the manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance, for which a maximum term of imprisonment of ten years or more is prescribed by law.

Here, § 69.50.401 states that it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, and sets the maximum term of imprisonment at five years. Wash. Rev. Code § 69.50.401. Thus, on its face, the statutory definition of Defendant's prior drug offenses do [*sic*] not meet the criteria for a predicate offense for purposes of the armed career criminal enhancement. Accordingly, under *Corona-Sanchez*, the Court need look no further. See *Corona-Sanchez*, 291 F.3d at 1213 ("[E]ven if the relevant documents were to establish the substantive elements of the generic crime, the offense of which [defendant] was convicted would still not constitute an aggravated felony because it fails to meet the one-year sentence requirement of § 1101(a)(43)(G).").

The Government argues that § 69.50.408 is neither discretionary nor a sentence enhancement but, rather, is a provision that automatically doubles the statutory maximum sentence for convictions under § 69.50 when the defendant has a second or subsequent conviction under that statute. Even if the Government does not want to call § 69.50.408 a sentencing enhancement, it clearly is meant to address the issue of recidivism. As the Supreme Court clearly stated, "recidivism does not relate to the commission of the offense." *Apprendi v. New Jersey*, 530 U.S. 466, 488 (2000); *see also Almendarez-Torres v. United States*, 523 U.S. 224, 230, 239-47

(1998) (concluding that a penalty provision that authorizes a court to increase the sentence for a recidivist does not define a separate crime). The Government's labeling of the statute as non-discretionary and not a sentencing enhancement does not affect the analysis. Indeed, in *Corona-Sanchez*, § 666 of the California Penal Code could arguably be categorized as a non-discretionary sentencing statute. Even so, the Circuit declined to consider this section when determining whether a predicate offense qualified as an aggravated felony.

In sum, Defendant's two prior California convictions for residential burglary do qualify as predicate offenses under the Armed Career Criminal enhancement. In order for the enhancement to apply, however, Defendant must be convicted of three qualifying predicate offenses. Because the Washington convictions do not meet the statutory definition of a predicate offense, the Armed Career Criminal enhancement should not be applied in this instance.

IT IS SO ORDERED. The District Court Executive is directed to enter this order and to provide copies to counsel and U.S. Probation.

DATED this 3 day of September 2004.

/s/ ILLEGIBLE
ROBERT H. WHALEY
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 04-30397, 04-30494

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

GINO GONZAGA RODRIQUEZ, DEFENDANT-APPELLANT

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

GINO GONZAGA RODRIQUEZ, DEFENDANT-APPELLEE

Argued and Submitted: Jan. 23, 2006
Filed: Oct. 5, 2006

Before: RAWLINSON and CLIFTON, Circuit Judges, and MARSHALL,* Senior District Judge.

RAWLINSON, Circuit Judge:

A jury convicted Gino Rodriquez of being a felon in possession of a firearm. On appeal, he argues that the district court erred in denying his motion to suppress the firearm because consent to search was not voluntary. He also contends that there was insufficient evidence to support his conviction. On cross-appeal, the

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* The Honorable Consuelo B. Marshall, Senior United States District Judge for the Central District of Columbia, sitting by designation.

government maintains that the district court erroneously concluded that Rodriquez's prior drug convictions do not qualify as predicate offenses under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(1). We conclude that the search was conducted pursuant to a valid consent; there was sufficient evidence to support the jury's finding that Rodriquez possessed the firearm; and the district court—relying on *United States v. Corona-Sanchez*, 291 F.3d 1201 (9th Cir. 2002) (en banc)—correctly held that Rodriquez's prior drug convictions do not qualify as predicate offenses under the ACCA. We therefore affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

Gino Rodriquez has several felony convictions in Washington State, including three convictions for delivery of a controlled substance. Rodriquez served his time and, upon his release, was placed on a term of community supervision, from which he absconded. He was subsequently placed on "escape status," and four warrants were issued for his arrest. His whereabouts were unknown until April 2003, when law enforcement officers located and arrested him.

Rodriquez was staying with Tammi Putnam in apartment 36 of an apartment complex in Spokane, Washington. Rodriquez had a key to the apartment, had access to the entire apartment, had his belongings there, and received mail there. Rodriquez and Tammi resided with Tammi's daughter and teenaged son, Zachary.

In March 2003, Zachary's friend, William Packer, spoke to Rodriquez about "getting rid" of a gun. Rodri-

quez told Packer that he could "get rid" of it. Packer brought the gun to the apartment for Rodriquez. Rodriquez looked at the gun, grabbed it with his shirt, pulled the gun out of the sleeve and replaced it. Rodriquez kept the gun, telling Packer that he would try to sell it. Zachary later observed Rodriquez in the apartment with the gun on a table. When Zachary asked about the gun, Rodriquez stated that he was "getting rid of it."

Meanwhile, a joint fugitive task force was looking for Rodriquez and conducting surveillance of Deanna Torgeson, whom the task force had learned was visiting Rodriquez on a regular basis. In April 2003, task force officers followed Torgeson to the apartment complex where Rodriquez resided. They observed Torgeson talking to Rodriquez right outside the rear, open door of apartment 36, while Rodriquez was eating a bowl of cereal.

Spokane County Sheriff Deputy Kris Thompson arrested Rodriquez pursuant to four outstanding warrants for his arrest. Deputy Thompson found a bag of heroin and approximately $900 dollars in cash when Rodriquez was searched. After Deputy Thompson administered the *Miranda* warnings, which Rodriquez waived, Rodriquez denied living in apartment 36. Rodriquez also made other statements that, according to Deputy Thompson, "didn't quite match up," including conflicting stories about how he arrived at the apartment.

At this point, Tammi arrived on the scene. When Deputy Thompson asked her whether she lived in apartment 36 and whether she knew Rodriquez or Torgeson, she responded that she did not live in that apartment, she did not know Rodriquez or Torgeson, and she was at

the complex to pick up her child. She then entered apartment 35.

After conversing with the resident of apartment 35, Deputy Thompson discovered that Tammi had not been forthright. He confronted Tammi with her earlier statements, which she confessed were false. He advised her that "it was a criminal offense to make a false or misleading statement to a public servant." During the course of their conversation, she seemed "nervous" and "upset." Deputy Thompson explained that Rodriquez had been arrested and told Tammi that a warrant could be obtained to search the apartment, in which case the apartment would be secured to ensure the integrity of its contents. Alternatively, she could consent to a search. Deputy Thompson informed Tammi that she had the right to refuse to consent and read to her a search consent card, which she reviewed, signed, and dated. Upon receiving her consent, the officers searched the apartment, where they discovered the gun underneath a couch.

Rodriquez was charged with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). He moved to suppress evidence seized during the search, asserting that Tammi's consent was not voluntary. The district court denied the motion, and Rodriquez was convicted by a jury.

Rodriquez also objected to the government's request that the judge enhance his sentence under the ACCA. He contended that his two prior burglary convictions and three prior drug convictions did not qualify as predicate offenses under the ACCA. The district court concluded that Rodriquez's prior burglary convictions qualified as two predicate offenses; however, rely-

ing on *Corona-Sanchez*, the district court held that the ACCA enhancement did not apply because Rodriquez's prior drug convictions did not qualify as predicate offenses. This timely appeal and cross-appeal followed.

II

DISCUSSION

A. The Motion to Suppress Was Properly Denied Because Tammi Putnam Voluntarily Consented to the Search of Apartment 36

"We review de novo the district court's denial of a suppression motion. The district court's underlying factual finding that a person voluntarily consented to a search is reviewed for clear error." *United States* v. *Pang*, 362 F.3d 1187, 1191 (9th Cir. 2004) (citations omitted).

"It is well settled that a search conducted pursuant to a valid consent is constitutionally permissible." *United States* v. *Soriano*, 361 F.3d 494, 501 (9th Cir. 2004) (citation and internal quotation marks omitted). "Whether consent to search was voluntarily given is to be determined from the totality of all the circumstances. It is the government's burden to prove that the consent was freely and voluntarily given. On appeal, evidence regarding the question of consent must be viewed in the light most favorable to the fact-finder's decision." *Id.* (citations and internal quotation marks omitted).

"Our cases have identified five factors to be considered in determining the voluntariness of consent to a search. They are: (1) whether the defendant was in custody; (2) whether the arresting officers had their guns drawn; (3) whether Miranda warnings were given; (4)

whether the defendant was notified that she had a right not to consent; and (5) whether the defendant had been told a search warrant could be obtained." *Id.* at 502 (citations and internal quotation marks omitted). "No one factor is determinative in the equation. It is not necessary to check off all five factors, but many of this court's decisions upholding consent as voluntary are supported by at least several of the factors. Nevertheless, these factors are only guideposts, not a mechanized formula to resolve the voluntariness inquiry." *Id.* (citations and internal quotation marks omitted).

Based on the totality of the circumstances and after considering the applicable factors, we conclude that Tammi voluntarily consented to the search. As to the first factor, the district court concluded, and Rodriquez conceded in his brief, that Tammi was not in custody when she consented to the search. Second, the court determined that there was no "indication that firearms were exhibited or drawn," a conclusion with which Rodriquez also agreed. Third, because Tammi was not in custody, "*Miranda* warnings were inapposite . . ." *Id.* at 504 (citation omitted). Fourth, the court found, and Rodriquez acknowledged, that Tammi knew she had the right to refuse consent. "Knowledge of the right to refuse consent is highly relevant in determining whether a consent is valid." *Id.* (alteration and citations omitted). Moreover, where, as here, "*the officers themselves* informed [Tammi] that she was free to withhold her consent," "the probability that their conduct could reasonably have appeared to her to be coercive" is "substantially lessened." *United States v. Mendenhall*, 446 U.S. 544, 559, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980) (emphasis added).

Fifth, Deputy Thompson told Tammi that, if she chose not to consent, he could apply for a search warrant and secure her apartment. A "statement indicating that a search warrant would likely be sought and the [apartment] secured could not have, by itself, rendered [Tammi's] consent involuntary as a matter of law." *United States v. Whitworth*, 856 F.2d 1268, 1279 (9th Cir. 1988) (citations omitted). Rather, application of this factor "hinges on whether [Tammi was] informed about the possibility of a search warrant in a threatening manner." *Soriano*, 361 F.3d at 504 (citations omitted). "Even assuming, however, that [Deputy Thompson's statements] were made in a threatening manner so as to imply the futility of withholding consent, when probable cause to justify a warrant exists, the weight of the fifth factor is significantly diminished." *Id.* at 504-05 (citations omitted).

Probable cause to justify a warrant existed in this case. "Probable cause exists when there is a fair probability or substantial chance of criminal activity. It is well-settled that the determination of probable cause is based upon the totality of the circumstances known to the officers at the time of the search." *Id.* at 505 (citations and internal quotation marks omitted).

Prior to the search, the officers knew the following: Rodriquez had absconded from his supervision, and there were four outstanding warrants for his arrest; he was found standing right outside an open door to an apartment eating a bowl of cereal; he denied residing at the apartment, but two people independently confirmed that he resided there; he provided an implausible explanation for how he arrived at the apartment; he attempted to distance himself from the apartment; and he

was in possession of "a considerable size chunk of heroin" and approximately $900 dollars in cash. This collection of facts implies a fair probability of criminal activity resulting in probable cause, thereby significantly diminishing the weight of the fifth factor. See *id.*

The voluntary consent analysis does not automatically end here, however, because the five factors articulated in *Soriano* are not exhaustive. *Id.* at 502. In addition to the five factors, "execution of a consent form is one factor that indicates that consent was voluntary." *United States v. Childs*, 944 F.2d 491, 496 (9th Cir. 1991) (alteration and citation omitted). In this case, Tammi executed a consent form, reinforcing the conclusion that she voluntarily consented.

In sum, the totality of the circumstances in this case leads us to conclude that the district court's finding that Tammi voluntarily consented to the search was not clearly erroneous. We therefore affirm the district court's denial of Rodriquez's motion to suppress.

B. There Was Sufficient Evidence to Support the Jury's Finding that Rodriquez Possessed the Firearm

"When reviewing convictions for sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Sanders*, 421 F.3d 1044, 1049 (9th Cir. 2005) (emphasis in the original) (citation and internal quotation marks omitted).

The evidence in the record reflects that Packer asked Rodriquez whether Rodriquez could "get rid" of

the gun for him. Rodriquez responded that he could. Packer brought the gun to Rodriquez, who looked at the gun and handled it. After telling Packer that he would try to sell it, Rodriquez kept the gun. Zachary later observed Rodriquez in the apartment with the gun on a table. When Zachary asked about the gun, Rodriquez stated that "he was getting rid of it."

The evidence also supports a reasonable inference that Rodriquez resided in the apartment in which the gun was discovered: officers observed Rodriquez standing outside an open door to the apartment eating a bowl of cereal; although he denied residing in the apartment, two people independently confirmed that he resided there; he had a key to the apartment; he had access to the entire apartment; he had belongings in the apartment; and officers found mail sent to Rodriquez at the apartment's address.[1]

We conclude that the evidence at trial, viewed in the light most favorable to the prosecution, could lead a rational trier of fact to find beyond a reasonable doubt that Rodriquez possessed the firearm. See *United States v. Garcia-Cruz*, 978 F.2d 537, 542 (9th Cir. 1992) (holding that the defendant's sole admission that he had

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[1] The fact that the gun was located under the couch "where numerous individuals had access and control" does not establish that Rodriquez did not have possession of it; the evidence still reasonably supports the inference that he did. Rodriquez provided an implausible explanation for how he arrived at the apartment, denied living in the apartment, and stated that "he didn't have any belongings in apartment # 36," all of which could lead a rational trier of fact to conclude beyond a reasonable doubt that he was attempting to distance himself from the apartment because he was aware that he had put the gun under the couch.

"the gun dropped off to [him] to pick up" was sufficient evidence of possession).

C. Corona-Sanchez Forecloses Use of Rodriquez's Prior Drug Convictions as Predicate Offenses Under the ACCA

We review *de novo* whether a prior conviction "may be used for purposes of enhancement under the ACCA . . ." *United States* v. *Phillips*, 149 F.3d 1026, 1031 (9th Cir. 1998).

Under the ACCA, a person who violates 18 U.S.C. § 922(g) and has three prior convictions for a "violent felony" or a "serious drug offense" is subject to a mandatory minimum sentence of fifteen years. 18 U.S.C. § 924(e)(1). One definition of a serious drug offense is "an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance . . . for which *a maximum term of imprisonment of ten years or more* is prescribed by law . . ." 18 U.S.C. § 924(e)(2)(A)(ii) (emphasis added).

Rodriquez was previously convicted of three drug offenses in violation of Washington Revised Code § 69.50.401, the maximum penalty for which is five years' imprisonment. Wash. Rev. Code § 9A.20.021(1)(c). However, if a person is convicted of "a second or subsequent offense," the maximum penalty is ten years. Wash. Rev. Code § 69.50.408(1). The question, then, is whether the district court should consider the maximum penalty as provided in the five-year statute of conviction (which would *not* trigger the ACCA enhancement), or consider the maximum ten-year penalty resulting from the recidivism provision (which *would* trigger the ACCA enhancement). The district court correctly applied our

decision in *Corona-Sanchez,* concluding that it could consider only the five-year maximum penalty provided in the statute of conviction.

In *Corona-Sanchez,* we considered a similar issue: whether a defendant's prior conviction for petty theft under California Penal Code § 484(a) qualified as an "aggravated felony." 291 F.3d at 1208. To qualify as an aggravated felony, the term of imprisonment for the theft offense had to be at least one year. *Id.* On the face of California Penal Code § 484(a), the maximum possible sentence was six months. *Id.* However, the defendant "actually received a two year sentence . . . due to the application of California Penal Code § 666, which provides a sentence enhancement for recidivists." *Id.*

In deciding *Corona-Sanchez,* we followed the "familiar analytical model constructed by the Supreme Court in *Taylor v. United States,* 495 U.S. 575, [600] [, 110 S. Ct. 2143, 109 L. Ed. 2d 607] (1990)." *Id.* at 1203. For federal sentencing enhancement purposes, when we consider the prison term imposed for a prior offense, "we must consider the sentence available for the crime itself, without considering separate recidivist sentencing enhancements."[2] *Id.* at 1209 (reiterating that the court

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[2] In general, federal courts apply this categorical approach to decide whether a defendant's prior conviction qualifies as a particular type of predicate offense (e.g., an "aggravated felony" or a "serious drug offense"), which, in turn, determines whether the defendant will receive an enhanced sentence. To decide whether a prior conviction counts as a particular type of predicate offense under the categorical approach, "federal courts do not examine the facts underlying the prior offense, *but look only to the fact of conviction and the statutory definition of the prior offense.*" *Corona-Sanchez,* 291 F.3d at 1203 (emphasis added) (citation and internal quotation marks omitted). In *Corona-Sanchez,* we

must examine the crime itself, "rather than any sentencing enhancements"); *see also United States v. Moreno-Hernandez*, 419 F.3d 906, 910 (9th Cir. 2005) (stating that, in *Corona-Sanchez*, the court held that "the substantive offense is to be considered independently of any recidivist sentencing enhancement."), *cert. denied*, — U.S. —, 126 S. Ct. 636, 163 L. Ed. 2d 515 (2005). We observed that this conclusion "is consistent with the Supreme Court's historic separation of recidivism and substantive crimes. As the Court bluntly put it, 'recidivism does not relate to the commission of the offense.'" *Corona-Sanchez*, 291 F.3d at 1209 (citations omitted).

The rationale articulated in *Corona-Sanchez* applies equally in this case,[3] dictating the conclusion that the district court could consider only the maximum penalty as provided in the five-year statute of conviction, and not the maximum ten-year penalty resulting from the recidivism provision.

The government attempts to distinguish *Corona-Sanchez* on several bases, none of which are persuasive. The government first posits that, unlike *Corona-Sanchez*, where the petty theft statute (Cal. Penal Code § 484) and the recidivism provision (Cal. Penal Code § 666) were "wholly separate," the statutes in this case "are both in the same article . . . and are codified in fairly close proximity . . ." However, this distinction is not convincing because, in *Corona-Sanchez*, we con-

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concluded that the categorical approach required us to "separate the recidivist enhancement from the underlying offense" and "consider the sentence available for the crime itself . . ." *Id.* at 1209-10.

[3] "We apply the categorical approach in a variety of sentencing contexts." *United States v. Piccolo*, 441 F.3d 1084, 1086 (9th Cir. 2006) (citation and internal quotation marks omitted).

cluded that "we must separate the recidivist enhancement from the underlying offense." *Corona-Sanchez*, 291 F.3d at 1210. We "must consider the sentence available for the crime itself, without considering separate recidivist sentencing enhancements." *Id.* at 1209. We observed that our conclusion is consistent with, and based on, the Supreme Court's historic separation of substantive crimes and recidivism, pertinent legislative history, and our own cases distinguishing between substantive offenses and recidivist sentencing enhancement statutes. *Id.* This rationale applies regardless of where the recidivist provision is located in the statutory framework. *Cf. United States v. Arellano-Torres*, 303 F.3d 1173, 1178 (9th Cir. 2002) (relying on *Corona-Sanchez* to disregard a sentencing enhancement located in the same section as the substantive offense).[4]

The government next argues that, in *Corona-Sanchez*, the issue was whether the defendant's prior conviction was for a "theft offense . . . for which the term of imprisonment is at least one year." *Corona-Sanchez*, 291 F.3d at 1204 (alteration, citation, and footnote reference omitted). The "theft offense" language, the government continues, suggests that Congress sought to include "only the punishment imposed for the theft offense itself." In contrast, according to the government, the issue in this case is whether Rodriquez's prior drug convictions were for "an offense . . . *involving* manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance . . ." 18 U.S.C. § 924(e)(2)(A)(ii) (emphasis added). The govern-

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[4] The government concedes that "the logic of *Corona-Sanchez* does not appear to be confined to separately codified sentencing schemes . . ."

ment contends that the language defining drug offenses is "more expansive and encompasses recidivist offenses . . ."

The government's reliance on the "theft offense" characterization is misplaced, however, because *Corona-Sanchez* did not rely on or attach any particular significance to that term. Rather, *Corona-Sanchez* focused on *the term of imprisonment for the theft offense* in determining whether a conviction for theft qualified as an aggravated felony. *See* 291 F.3d at 1208.

By urging us to conclude that the term "involving" is so broad as to "encompass[ ] recidivist offenses," the government is, in effect, contending that the drug offenses should be interpreted as subsuming corollary recidivism enhancements. That interpretation would effectively render "offense" and "sentencing enhancements" coterminous, a result that is foreclosed by Supreme Court precedent. *See Apprendi v. New Jersey*, 530 U.S. 466, 488, 496, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) ("[R]ecidivism does not relate to the commission of the offense.") (internal quotation marks omitted); *see also Rusz v. Ashcroft*, 376 F.3d 1182, 1185 (9th Cir. 2004) ("[S]entence enhancements . . . do not describe substantive criminal offenses . . .") (internal quotation marks omitted) (citing *Corona-Sanchez*, 291 F.3d at 1211); *Montiel-Barraza v. INS*, 275 F.3d 1178, 1180 (9th Cir. 2002) (per curiam) (holding that California Vehicle Code § 23175 [now § 23550, which provides an enhanced penalty for successive convictions for driving under the influence of alcohol,] "is an enhancement statute; it does not alter the elements of the underlying offense.") (citation omitted).

Finally, the government postulates that *Corona-Sanchez* applies only where the underlying offense is a misdemeanor and applying the recidivism provision would transform the misdemeanor into a felony. Because Rodriquez's prior drug offenses are already felonies, the government maintains, *Corona-Sanchez* does not apply, and the district court should have considered the maximum penalty applying the recidivism provision.

We disagree. *Corona-Sanchez* applies irrespective of the nature of the underlying crime of which a defendant is convicted. In *Corona-Sanchez*, we held that "a crime may be classified as an 'aggravated felony' . . . without regard to whether, under state law, the crime is *labeled* a felony or a misdemeanor." 291 F.3d at 1210 (emphasis in the original). In so holding, we agreed with our sister circuits that "it is irrelevant whether the state labels the underlying crime 'misdemeanor' or 'felony'. . . . The relevant question is whether the crime meets the definition of an 'aggravated felony' under federal sentencing law." *Id.* (citation and footnote reference omitted).

Likewise, Rodriquez's three convictions for delivery of a controlled substance may be classified as "serious drug offenses" "without regard to whether, under state law, the crime is *labeled* a felony or a misdemeanor." *Id.* As articulated in *Corona-Sanchez*, "it is irrelevant" whether Rodriquez's underlying crimes are misdemeanors or felonies; the relevant question is whether his prior drug offenses meet the definition of a "serious drug offense." *Id.* Under *Corona-Sanchez*, whether application of a recidivism enhancement would transform a misdemeanor into a felony is simply of no import.

However the government frames its argument, the essence of its request is that we consider the offense and the sentencing enhancement together. But that is precisely what is forbidden by *Corona-Sanchez* and its progeny. *See Moreno-Hernandez*, 419 F.3d at 911 ("*Corona-Sanchez* explained the cleaving of the recidivist enhancement from the underlying offense largely on the basis that the enhancement was measured by recidivism. Following the Supreme Court's reiteration . . . that 'recidivism does not relate to the commission of the offense,' the en banc court regarded petty theft as a single, substantive offense, as to which various sentencing alternatives were available depending on the defendant's past criminal history.") (citations and emphasis omitted).

In sum, the government's distinctions cannot overcome the language in, or the rationale of, *Corona-Sanchez*. Based on *Corona-Sanchez*, the district court properly concluded that it could consider only the five-year maximum penalty provided in the statute of conviction. Because Rodriquez's prior drug convictions do not qualify as predicate offenses under the ACCA, the district court correctly declined to apply that enhancement.[5]

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[5] We recognize that this conclusion is in conflict with the Seventh Circuit's decision in *United States* v. *Henton*, 374 F.3d 467, 469-70 (7th Cir. 2004), *cert. denied*, 543 U.S. 967, 125 S. Ct. 431, 160 L. Ed. 2d 336 (2004), and in tension with the Fifth Circuit's decision in *Mutascu* v. *Gonzales*, 444 F.3d 710, 712 (5th Cir. 2006) (per curiam), and the Fourth Circuit's decision in *United States* v. *Williams*, 326 F.3d 535, 539 (4th Cir. 2003). Nevertheless, *Corona-Sanchez* is binding Ninth Circuit precedent and dictates the conclusion we reach.

III

CONCLUSION

Because Tammi Putnam voluntarily consented to the search of apartment 36, the motion to suppress the firearm was properly denied. There was sufficient evidence presented during trial to enable a rational jury to conclude beyond a reasonable doubt that Rodriquez possessed the firearm. *Corona-Sanchez* applies in this ACCA case, dictating the conclusion that Rodriquez's prior drug convictions do not qualify as predicate offenses under the ACCA.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 04-30397
D.C. No. CR-03-00142-RHW
Eastern District of Washington, Spokane

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

GINO GONZAGA RODRIQUEZ, DEFENDANT-APPELLANT

No. 04-30494
D.C. No. CR-03-00142-RHW
Eastern District of Washington, Spokane

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

GINO GONZAGA RODRIQUEZ, DEFENDANT-APPELLEE

[Filed: Jan. 12, 2007]

ORDER

Before: RAWLINSON and CLIFTON, Circuit Judges, and MARSHALL,* Chief District Judge.

The panel has voted to deny the petition for rehearing en banc.

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* The Honorable Consuelo Marshall, Senior United States District Judge for the Central District of California, sitting by designation.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote.

The petition for rehearing en banc filed on November 20, 2006, is DENIED.

STATUTORY PROVISIONS

1. Section 9A.20.021(1)(c) of the Revised Code of Washington Annotated (West 1994) provides:

Maximum sentences for crimes committed July 1, 1984, and after

(1) Felony. No person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

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(c) For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of ten thousand dollars, or by both such confinement and fine.

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2. Section 69.50.101(r)(1) of the Revised Code of Washington Annotated (West 1994) provides:

Definitions

Unless the context clearly requires otherwise, definitions of terms shall be indicated where used in this chapter:

(r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

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3. Section 69.50.204 of the Revised Code of Washington Annotated (West 1994) provides:

Schedule I

Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule I:

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(2) Acetylmethadol;

(3) Allylprodine;

(4) Alphacetylmethadol;

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide); (1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl some trade or other names: N-[1-(2-hydrox-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(13) Betameprodine;

(14) Betamethadol;

(15) Betaprodine;

(16) Clonitazene;

(17) Dextromoramide;

(18) Diampromide;

(19) Diethylthiambutene;

(20) Difenoxin;

(21) Dimenoxadol;

(22) Dimepheptanol;

(23) Dimethylthiambutene;

(24) Dioxaphetyl butyrate;

(25) Dipipanone;

(26) Ethylmethylthiambutene;

(27) Etonitazene;

(28) Etoxeridine;

(29) Furethidine;

(30) Hydroxypethidine;

(31) Ketobemidone;

(32) Levomoramide;

(33) Levophenacylmorphan;

(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);

(35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;

(36) Morpheridine;

(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(38) Noracymethadol;

(39) Norlevorphanol;

(40) Normethadone;

(41) Norpipanone;

(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);

(43) PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(44) Phenadoxone;

(45) Phenampromide;

(46) Phenomorphan;

(47) Phenoperidine;

(48) Piritramide;

(49) Proheptazine;

(50) Properidine;

(51) Propiram;

(52) Racemoramide;

(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanaminde);

(54) Tilidine;

(55) Trimeperidine.

(b) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desormorphine;

(8) 3,4-methylenedioxy-N-ethylamphetamine some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenthylamine, N-ethyl MDA, MDE, MDEA;

(9) N-hydroxy-3,4-methylenedioxyamphetamine some trade or other names: N-hydroxy-alpha-methyl-

3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;

(10) Dihydromorphine;

(11) Drotebanol;

(12) Etorphine, except hydrochloride salt;

(13) Heroin;

(14) Hydromorphinol;

(15) Methyldesorphine;

(16) Methyldihydromorphine;

(17) Morphine methylbromide;

(18) Morphine methylsulfonate;

(19) Morphine-N-Oxide;

(20) Myrophine;

(21) Nicocodeine;

(22) Nicomorphine;

(23) Normorphine;

(24) Pholcodine;

(25) Thebacon.

(c) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA;

(2) 2,5-dimethoxyamphetamine: Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;

(3) 4-methoxyamphetamine: Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA;

(4) 5-methoxy-3,4-methylenedioxy-amphetamine;

(5) 4-methyl-2,5-dimethoxy-amphetamine: Some trade and other names: 4- methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP";

(6) 3,4-methylenedioxy amphetamine;

(7) 3,4-methylenedioxymethamphetamine (MDMA);

(8) 3,4,5-trimethoxy amphetamine;

(9) Bufotenine: Some trade or other names: 3-(beta-Dimethylaminoethyl)-5- hydroxindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5- hydroxy-N,N-dimethyltryptamine; mappine;

(10) Diethyltryptamine: Some trade or other names: N,N-Diethyltryptamine; DET;

(11) Dimethyltryptamine: Some trade or other names: DMT;

(12) Ibogaine: Some trade or other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13,- octahydro-2-methoxy-6,9-methano-5H-pyndo (1',2' 1,2) azepino (5,4-b) indole; Tabernanthe iboga;

(13) Lysergic acid diethylamide;

(14) Marihuana or marijuana;

(15) Mescaline;

(16) Parahexyl-7374: Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10- tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;

(17) Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts; (interprets 21 U.S.C. Sec. 812(c), Schedule I(c)(12));

(18) N-ethyl-3-piperidyl benzilate;

(19) N-methyl-3-piperidyl benzilate;

(20) Psilocybin;

(21) Psilocyn;

(22) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, species, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1 - cis - or trans tetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration;

(ii) Delta 6 - cis - or trans tetrahydrocannabinol, and their optical isomers;

(iii) Delta 3,4 - cis - or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(23) Ethylamine analog of phencyclidine: Some trade or other names: N-ethyl-1phenylcyclohexalymine, (1-phenylcyclohexl) ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE;

(24) Pyrrolidine analog of phencyclidine: Some trade or other names: 1-(1- phencyclohexyl)pyrrolidine; PCPy; PHP;

(25) Thiophene analog of phencyclidine: Some trade or other names: 1-(1-[2- thenyl]-cyclohexly)-pipendine; 2-thienylanalog of phencyclidine; TPCP; TCP;

(26) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine: A trade or other name is TCPy.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) Mecloqualone.

(2) Methaqualone.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, com-

pound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline;

(2) (+-)cis-4-methylaminorex ((+-)cis-4,5-dihydro-4-methyl-5-phenyl-2- oxazolamine);

(3) N-ethylamphetamine;

(4) N,N-dimethylamphetamine: some trade or other names: N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenoethylene.

The controlled substances in this section may be rescheduled or deleted as provided for in RCW 69.50.201.

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4. Section 69.50.401 of the Revised Code of Washington Annotated (West 1994) provides:

Prohibited acts: A—Penalties

(a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this section with respect to:

(i) a controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilo-

grams of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars, for each gram in excess of two kilograms, or both such imprisonment and fine;

(ii) any other controlled substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iii) a substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(ii) any other counterfeit substance classified in Schedule, I, II, or III, is guilty of a crime and upon con-

viction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iii) a counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(c) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance or material in lieu of such controlled substance. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(d) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a crime, and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both, except as provided for in subsection (e) of this section.

(e) Except as provided for in subsection (a)(1)(ii) of this section any person found guilty of possession of forty grams or less of marihuana shall be guilty of a misdemeanor.

(f) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance. A violation of this subsection shall be punished as a class C felony punishable in accordance with RCW 9A.20.021.

5. Section 69.50.408 of the Revised Code of Washington Annotated (West 1994) provides:

Second or subsequent offenses

(a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his or her conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under RCW 69.50.401(d).